

CA20N
EAB
-H26

Government
Publications

EA-87-02



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 399

DATE: Wednesday, October 21, 1992

BEFORE:

A. KOVEN Chairman

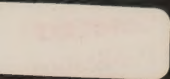
E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

EARR &
ASSOCIATES
REPORTING INC.

(416) 482-3277

2310 Yonge St., Suite 709, Toronto, Canada M4P 1E4



CA20N
EAB
-H26

Government
Publication

EA-87-02



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 399

DATE: Wednesday, October 21, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416) 963-1249

**EARR &
ASSOCIATES
REPORTING INC.**

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.


Hearing held at the Civic Square,
Council Chambers, 200 Brady Street,
Sudbury, Ontario, on Wednesday, October
21, 1992, commencing at 9:00 a.m.

VOLUME 399

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116530932>

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.	)	MINISTRY OF NATURAL
MS. C. BLASTORAH	)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	
MS. J. SEABORN	)	MINISTRY OF ENVIRONMENT
MS. N. GILLESPIE)	
MR. R. TUER, Q.C.	)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN	)	ASSOCIATION and ONTARIO
MS. E. CRONK	)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY	)	ASSOCIATION
MR. D. HUNT)	
MR. R. BERAM		ENVIRONMENTAL ASSESSMENT BOARD
MR. J.E. HANNA	)	ONTARIO FEDERATION
DR. T. QUINNEY	)	OF ANGLERS & HUNTERS
MR. D. O'LEARY		
MR. D. HUNTER	)	NISHNAWBE-ASKI NATION
MR. M. BAEDER	)	and WINDIGO TRIBAL COUNCIL
MS. M. SWENARCHUK	)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. D. COLBORNE	)	GRAND COUNCIL TREATY #3
MR. G. KAKEWAY)	
MR. J. IRWIN		ONTARIO METIS & ABORIGINAL ASSOCIATION
MS. M. HALL		KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY

APPEARANCES (Cont'd):

MR. R. COTTON		BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS	)	ONTARIO TRAPPERS
MR. R. BARNES	)	ASSOCIATION
MR. P. ZYLBERBERG	)	NORTHWATCH COALITION
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)		RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK	)	MUNICIPAL COMMITTEE
MR. D. SCOTT	)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR	)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL		GREAT LAKES FOREST
MR. S.M. MAKUCH		CANADIAN PACIFIC FOREST PRODUCTS LTD.
MR. D. CURTIS	)	ONTARIO PROFESSIONAL
MR. J. EBBS	)	FORESTERS ASSOCIATION
MR. D. KING		VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. H. GRAHAM		CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI		BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

APPEARANCES (Cont'd):

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Argument:</u>	<u>Page No.</u>
Cronk	68339

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning, Ms. Cronk.
3 Are we ready to proceed with hearing your final
4 argument?

5 MS. CRONK: We are, Madam Chair, thank
6 you.

7 ARGUMENT BY MS. CRONK:

8 Good morning, Madam Chair, Mr. Martel.
9 It's Mr. Cassidy's privilege and mine to present our
10 final submissions to you in this case starting this
11 morning. And I'd like to start, Madam Chair, Mr.
12 Martel, by indicating clearly the position of the
13 Industry with respect to the nature of this hearing.

14 This hearing, in our submission, is about
15 timber management. This is also a case about the
16 people of northern Ontario, I suggest, and the
17 communities in which they live, it's a case about their
18 livelihoods, their dependence on the forest products
19 industry, and their future; it's a case about the role
20 of the forest products industry in the economy of
21 northern Ontario, in the communities of northern
22 Ontario and in the province as a whole; it's a case,
23 stated in its simplest terms, about the future of the
24 timber resource in the area of the undertaking and,
25 inextricably interwoven with that, the future of the

1 forest products industry in northern Ontario. I
2 repeat, it's a case about timber management.

3 And I start that way, Madam Chair, Mr.
4 Martel, because you have heard a great deal of
5 evidence, as we all know, over the last four years
6 covering a host of issues.

7 But this is not a case, we submit, at the
8 end of the day when you examine the evidence you have
9 heard about first forest management; it is not a case,
10 we submit, about ecosystems or landscape management; it
11 is not a case about land use planning issues writ
12 large; it is not a case about Native Treaty rights; it
13 is not a case about management to achieve biodiversity;
14 and it's not a case about old growth or countless other
15 issues that have been raised by the intervenors and by
16 members of the public during the course of the hearing.

17 That is not to say, Madam Chair, Mr.
18 Martel, that many of those issues don't have aspects
19 that bear on timber management. It's our submission
20 that in some cases they do, but in the end, after the
21 length of time that has been spent in the course of
22 this hearing, and having regard to the enormous
23 quantity of evidence that you have received, it's our
24 respectful submission that at this stage, the final
25 stage of the proceeding, it becomes important to focus

1 again on what the essence of this case is, what the
2 nature of the undertaking is and what its purpose is,
3 and all of those questions, we suggest, are answered by
4 remembering that it is a case about timber management.

5 There may be a case in another forum at
6 another time about forest management, for example, or
7 about old growth, or about biodiversity and its aspects
8 on various planning programs and strategies throughout
9 the province; but, in our respectful submission, that's
10 not the case that is before you or that came before you
11 four years ago.

12 Again, I say this is a case about timber
13 management. That's the case the Industry chose to
14 participate in four years ago and remained throughout
15 to participate on; that's the case that the Industry
16 received formal notice of four years ago; that's the
17 case that the Industry led evidence on, and that's the
18 undertaking which shaped the evidence that you heard
19 from the Industry and the Ministry of Natural
20 Resources.

21 And it is in the context I suggest of
22 that re-examination of the nature of the undertaking
23 that we invite you at the end of the day when you come
24 to make your decision in this case to assess the
25 evidence that you heard and to examine what the nature

1 of the evidence was in light of the fact that this is,
2 and has always been, a case about timber management.

3 Madam Chair, Mr. Cassidy and I have
4 attempted to structure our submissions in a way that
5 will assist you by subject matter and follow them
6 during the course of today and tomorrow, and I'd like
7 to spend just a moment and outline for you the areas
8 that we propose to deal with between us, and subject to
9 any other matters that you wish to hear from us on.

10 But I propose first to deal in a brief
11 way with what, I suggest, is the very important matter
12 of who the forest products industry is in this case,
13 what their role is in northern Ontario and in the area
14 of the undertaking, and why that matters, why it's
15 important.

16 Secondly, to deal in more specific detail
17 based on the evidence that you've heard with what we
18 suggest to you is the nature of the undertaking and its
19 purpose in this case; that is, to deal with what the
20 undertaking is and what it is not.

21 So you will hear from me some of the
22 evidence concerning forest management issues that were
23 raised at this hearing; some of the issues raised by
24 parties relating to land use planning and what the
25 Industry's position is concerning those issues.

1 And then, thirdly, I propose to deal in
2 some detail on the evidence with the various methods
3 for carrying out the undertaking that have been
4 delineated in the evidence before you. In our written
5 submissions that we gave to you we called those
6 implementation of the undertaking. So that very
7 lengthy section in Volume 1 of our written submissions
8 beginning at Part 4 dealing with implementation of the
9 undertaking is a discussion of the various methods
10 which have been proposed by the proponent and which
11 emerged in the evidence about ways in which to carry
12 out the undertaking. And I refer, of course, to access
13 issues, harvest issues, maintenance issues and renewal
14 issues, and I propose to deal with those in some
15 detail.

16 Then, Madam Chair, we will deal with the
17 issue of the null alternative and how as a matter of
18 law and a practical reality we suggest that that be
19 dealt with, and we will deal then in some detail, Mr.
20 Cassidy will make submissions to you, if you'll receive
21 them, on the planning issues before you and on the
22 planning proposals put forward by the Industry.

23 And then, finally, I will have some
24 concluding remarks and will outline for you the
25 specific order that we ask you to make in this case.

1 If I could start then, first, with what I
2 described, Madam Chair and Mr. Martel, as the important
3 issue of who the Industry is and its role is in the
4 area of the undertaking and in the economy of the
5 north.

6 We appreciate that there are a large
7 number of parties that have appeared before you in this
8 case, some on a full-time active daily basis, others on
9 an intermittent basis, and some for the purpose of
10 making submissions to you as you appeared in local
11 communities throughout the area of the undertaking.

12 But it is very important, in our
13 submission, that it be understood that because of the
14 type of undertaking in this case, that is, an
15 undertaking relating to timber management, that what is
16 really at issue here, apart from the pure resource
17 aspect of the hearing, is the future of the forest
18 products industry in the area of the undertaking. And
19 I say that, Madam Chair, because after four years of
20 receiving evidence you have received considerable
21 evidence concerning precisely who the Industry is and
22 what it is in the social and economic environment of
23 the area of the undertaking.

24 That I suggest, and I do so with all
25 respect for the discipline from which I come, is simply

1 the legal label, the social and economic environment in
2 the area of the undertaking, for saying: Who are these
3 people, why are they important, and what is it that
4 they do, how do they stand to be affected by the
5 decision that you will make; and, if they are, who else
6 gets affected with them.

7 And I say to you that that is a context
8 in which all of the evidence must be assessed or should
9 be assessed by you and that it becomes important to
10 remember what you were told, not only by the experts in
11 this hearing on that issue, and not only by the
12 Industry experts themselves, but by the people who live
13 in the communities that you visited and that you heard
14 from over the last four years.

15 It is the Industry's position that the
16 evidence before you demonstrates that the forest
17 products industry is what we have termed in our
18 submissions the engine of the economy of northern
19 Ontario. And I phrase that submission in the way I do,
20 Madam Chair, Mr. Martel, because these are not
21 positions taken by the Industry for the sake of taking
22 positions. Everything that I'm going to say to you
23 this morning about this is grounded in the evidence and
24 I say to you that the evidence indicates, without
25 contradiction or challenge, that this particular

1 Industry in the area of the undertaking is in fact the
2 engine, is in fact the heart of the social and economic
3 environment of the area of the undertaking.

4 It is our submission as well that the
5 evidence establishes before you that there is no other
6 industry, whatever some may have thought at the outset
7 of this hearing, there is no other industry, including
8 the tourism industry, that can serve as a substitute in
9 the area of the undertaking for the forest products
10 industry, and I'm going to suggest to you that direct
11 unchallenged evidence demonstrating that has been
12 adduced before you.

13 In our submission the evidence clearly
14 demonstrates before you as well that the forest
15 products industry is the, not a, the major contributor
16 to the economy of the north and a major contributor to
17 the social fabric of the area of the undertaking, and
18 you received specific evidence on that as well.

19 It follows from that that an adverse
20 impact on the forest products industry in the area of
21 the undertaking will have not a potential but an
22 inevitable adverse impact on the communities that it
23 serves, on the area of the undertaking as a whole, and
24 in the context of the evidence that you've received, on
25 the economy of the province.

1 The evidence that establishes those
2 facts, Madam Chair, Mr. Martel, are detailed in our
3 submissions at Tab 1, Volume 1 beginning at page 7 and
4 following and perhaps I should speak just for a moment
5 about the organization of these submissions.

6 You have three volumes of written
7 submissions from us in this matter. The first volume
8 deals, among other matters, with our submissions
9 concerning the social and economic implications of this
10 case for the forest products industry. Because of the
11 timing of their delivery you received those as a
12 separate volume, but they're repeated in volume 2, so I
13 don't propose to ask you at any point to go to that
14 first thin volume that you received. But if you look
15 at Tab 1 of the larger book, that is where our
16 submissions on the social and economic environment
17 issues are found.

18 Now, in a brief way I propose, Madam
19 Chair, Mr. Martel, to review, in the hope that it will
20 assist you when you come to consider these issues, the
21 evidence that you heard and to identify the witnesses
22 from whom you heard it.

23 You heard, for example, from Ms. Alison
24 Coke on behalf of the Ministry of Natural Resources
25 earlier on in this hearing about the role of the

1 Industry. She indicated that at least 72,000 people
2 were directly employed in the forest industry in
3 Ontario. She referred to that, however, as a
4 conservative estimate. That figure 72,000, that
5 conservative estimate did not include thousands of
6 individuals, she said, who are indirectly employed in
7 the forest industry in related occupations.

8 So, for example, it didn't include
9 silvicultural workers, it did not include firefighters,
10 it did not include MNR employees, it did not include
11 nursery workers and the like. She was talking, that is
12 Ms. Coke was talking about those directly employed by
13 the Industry.

14 You also heard evidence, as I alluded to
15 a few moments ago, at the satellite hearings from a
16 host of individuals, from a whole collection of people,
17 about the importance of the forest industry in the area
18 of the undertaking and the contribution that the
19 Industry makes to the area of the undertaking, and I
20 suggest to you that that evidence when you look at it
21 confirms the immense importance of the Industry in the
22 area of the undertaking, and I ask you to consider the
23 type of people that you heard from.

24 They ranged from municipal officials, to
25 tourist outfitters, to union officials, organized

1 labour, to Native representatives, to executives, to
2 employees of forest industry companies in the north, to
3 present and former politicians, cottagers, retirees,
4 employees of equipment firms, silvicultural
5 contractors, independently employed foresters
6 independently employed loggers.

7 You heard, I suggest, from a very
8 representative and broad-ranging collection of people
9 on those satellite hearings and I suggest to you that
10 what comes out of their evidence, and the reasons that
11 many of them came to testify before you, was to
12 underscore what their communities really are all about
13 and what role the Industry does play for them and how
14 important it is for them.

15 I don't say, of course, that they didn't
16 deal with other issues, they did, but many of them were
17 there to describe to you and to try to paint for those
18 who don't live in the community a picture of what it is
19 to be part of and to be dependent upon the forest
20 product industry in the north.

21 I refer you, for example, to the evidence
22 of Mr. Bob Pellow who is a representative of the
23 Canadian Paperworkers Union who testified as follows:

24 "Our Union represents some 900 workers
25 in the Kimberly-Clark New York Times

1 Newsprint mill located in Kapuskasing
2 surrounded by the Gordon Cousens forest
3 from which our mill obtains its fiber.
4 The papermill is the single most
5 important source of employment in the
6 area and, as a result, the town is
7 dependent on the forest for its very
8 existence. In order for our community to
9 exist in the future, we must protect the
10 viability of the mill by ensuring that we
11 have a healthy and sustainable forest."

12 Mr. Les Wilson representing the
13 International Woodworkers Association testified at the
14 Sioux Lookout satellite hearing and said the following.
15 He said that:

16 "A study done from the Sioux Lookout
17 Economic Development Office indicated
18 that current, direct and linked
19 employment to Sioux Lookout and McKenzie
20 Forest Products composed 32.5 per cent of
21 the local private sector workforce."

22 And I picked those as two examples only,
23 Madam Chair. When I went through to get a literal
24 sense of the evidence of the people at the satellite
25 hearings there were numerous examples of where people

1 had described this in varying fashions.

2 I don't propose to ask you to consider
3 this morning the evidence of each of those individuals,
4 but what we have done is we have prepared a list of
5 some of the individuals who spoke to this issue at the
6 satellite hearings and prepared a list of the
7 transcripts where their evidence might be found and the
8 pages where it might be found and I would like to offer
9 that to you and ask you at the end of the day to
10 consider what it was they said.

11 In addition to the evidence that you
12 heard at the satellite hearings, Mr. Martel and Madam
13 Chair, you'll recall that you heard expert evidence
14 from a number of witnesses called on behalf of the MNR
15 and on behalf of the Industry on this issue. Witness
16 panel No. 2 called on behalf of the OFIA/OLMA consisted
17 of Mr. Cam. Watson, you may recall, and Mr. Michael
18 Ross, both economists.

19 The purpose of that panel was to explore
20 in evidence for you the contributions of the forest
21 industry to northern Ontario and to explain the
22 socio-economic and environmental impacts that would
23 result from increased cost to the Industry. So that
24 there's a context in which to assess not only the
25 appropriateness of increased cost, but the impact the

1 likely consequences of increased cost.

2 Mr. Watson primarily dealt with the
3 industry as employer, if I can put that generic
4 description on the nature of his evidence. He
5 demonstrated, based on the work that he had done which
6 he described to you, that the extent of direct
7 employment by the forest industry of people in northern
8 Ontario was considerable and he set out, you may
9 remember, the nature of the study that he done, the
10 calculations based on various communities that he had
11 prepared based on his actual review of the employment
12 statistics and the role of the industry in those
13 communities. It was his evidence that there are just
14 under 30,000 forest industry employees located in the
15 north, a number equalling a significant percentage of
16 the employment in the area.

17 You may remember that Mr. Watson
18 distinguished between the north and the near north for
19 the purposes of defining the area that he was looking
20 at, so he spoke first about the north and then the near
21 north. And in the end what he said to you was, based
22 on the communities that he looked at, they could be
23 roughly described or divided into four categories, and
24 he said that the first of those categories were those
25 comprised of communities in which the local economy was

1 based almost entirely on forestry.

2 The second category were communities in
3 which the forest industry is a major part of the local
4 economy. Those are communities considered
5 single-industry communities, and he said that about 18
6 per cent of the population of the north fell into that
7 category.

8 And the third category was comprised of
9 communities in which the forest products industry,
10 while not the predominant employer, plays a predominant
11 economic role.

12 And the fourth category was comprised of
13 those communities in which the forest products industry
14 was not a significant employer.

15 Based on that categorization and his
16 detailed look, I suggest, at the communities across the
17 area of the undertaking that fell within each, it was
18 Mr. Watson's evidence to you that approximately two
19 thirds of the population of northern Ontario live in a
20 community where the forest industry is a factor of some
21 significance, predominant, significant or a contributor
22 to the local economy.

23 What that means, Madam Chair and Mr.
24 Martel, in the context of this hearing, I suggest, is
25 that about two thirds of the population of northern

1 Ontario are served in some significant fashion by this
2 industry.

3 It was Mr. Watson's unchallenged
4 evidence, and I say unchallenged in the sense that
5 there was no evidence led to contradict or to challenge
6 his findings in this regard, that based on the results
7 of his study the communities served in some significant
8 fashion by the forest industry tend in comparison to
9 other communities not so served to be wealthier based
10 on average incomes, to be somewhat healthier as
11 measured by unemployment rates, to have stronger
12 municipal assessment bases, to be less dependent on
13 public funding for the support of the local economy,
14 and to manifest a number of desirable residential
15 characteristics; in other words, increased home
16 ownership and the like.

17 In other words, he took a look at the
18 usual economic measures to see what the impact of this
19 industry was in the north, and he made a direct
20 comparison for you between those communities which did
21 not enjoy, at whatever level, a contribution by this
22 industry and those that did, and that was his evidence
23 Before you.

24 It's respectfully submitted that what
25 that evidence comes to before you, what in the end it

1 establishes, is that communities in northern Ontario
2 served in some significant fashion by this industry
3 enjoy distinct advantages over non-forestry dependent
4 communities and that this industry, the forest products
5 industry is, as I have suggested, the engine of the
6 area of the undertaking.

7 What then is the consequence of adverse
8 impact to this industry in the north if such were to
9 occur. Forests for Tomorrow has acknowledged in its
10 written argument, Madam Chair, Mr. Martel, at page 236
11 paragraph 594 - I don't suggest that you need go there
12 unless you wish to, but that's the reference - they've
13 suggested that, and I quote:

14 "It is possible there will be some
15 negative employment implications of FFT's
16 terms and conditions."

17 FFT suggest that those implications are
18 quote:

19 "...unlikely to be important over the
20 short term...", and that over the long

21 term:

22 "...adjustments can be fairly readily
23 made."

24 It is my respectful submission to you,
25 Madam Chair, Mr. Martel, that there is no evidence

1 whatsoever before this Board to demonstrate that those
2 suggestions of the impact of FFT's proposed terms and
3 conditions are accurate. That was an opinion expressed
4 by Mr. Morrison during the course of his evidence
5 before you.

6 But both Mr. Muller and Mr. Morrison, you
7 may recall, that they were called by Forests for
8 Tomorrow to talk to economic issues. Both of them
9 admitted that they had not prepared or undertaken any
10 detailed analysis or study of impact on the industry of
11 FFT's terms and conditions. More specifically, what
12 they told you was that they had not undertaken any
13 detailed work, analysis or report explicitly addressed
14 to the changes in employment or the geographic
15 distribution of employment or income which they
16 expected to occur from implementation of the FFT
17 conditions.

18 And I suggest to you, Mr. Martel and
19 Madam Chair, that that's important because the opinion
20 has been offered to you that that impact, and surely
21 there will be that impact, in the short term is not
22 significant and, in the long term, can be met by
23 suitable adjustments. So there's no real basis for
24 that expression of opinion to you, short of the views
25 of individuals who did not look at it or assess it or

1 analyse it.

2 What this indicates, Madam Chair, Mr.
3 Martel, is that they expect that there will be an
4 adverse impact. Mr. Muller and Mr. Morrison said that
5 they expected it, but the extent of it has not been
6 looked at, the scale of it hasn't been looked at, and
7 the implications for the communities in the area of the
8 undertaking haven't been looked at under FFT's proposed
9 terms and conditions.

10 I suggest to you that there is no
11 evidence, therefore -- in the legal sense there is no
12 evidence before you to support the claim that the
13 impacts are unlikely to be important over the short
14 term and addressable in the long term.

15 In contrast, Madam Chair, Mr. Martel -
16 and I ask you to consider this evidence - you heard
17 from Cam Watson about specific case studies which he
18 had conducted in Dryden, Chapleau and Ear Falls
19 regarding the effects of the forest industry on the
20 those communities and the results on those communities
21 in the event of adverse impact to the industry.

22 The results -- perhaps I could deal with
23 the Chapleau case study first. You may remember that
24 he outlined the results of each.

25 He conducted a case study in the Chapleau

1 area and he said to you that the result of that case
2 study indicated that virtually half of the economy of
3 that community consisted of jobs related to the forest
4 industry. Mr. Watson concluded, and I quote:

5 "If the forest industry were removed or
6 downsized to any considerable degree
7 there would be a commensurate reflection
8 in the economy of Chapleau."

9 With respect to his case study in Ear
10 Falls, Mr. Watson indicated that the impact of a
11 downsizing in such a community is:

12 "...very real and it's felt throughout
13 the community and it definitely has a
14 very significant negative impact upon
15 businesses and upon the municipality. It
16 definitely puts additional pressure upon
17 senior levels of government for grants
18 and significant pressure upon property
19 tax rate and for a remote community it
20 quite clearly is a very difficult matter
21 when faced with a loss of that nature to
22 replace that loss."

23 Mr. Watson also studied the potential
24 socio-economic implications at the community level if
25 management policies are introduced which unduly

1 restrict wood supply. It was his evidence that the
2 result could be a reduction in production at mills and
3 the deferral or cancellation of plans to expand,
4 including in some instances possibly closure, and he
5 talked about the loss of opportunity for investment
6 that would follow from that and inevitably - that's his
7 word - inevitably the fewer jobs that would be
8 available within the community.

9 So he looked at it, first, in the context
10 of specific community case studies, then he looked at
11 it in the context of impact at the community level,
12 then he looked at it in the context of impact in the
13 social environment context and he said that undue
14 restrictions in wood supply would lead to a reduction
15 in local income and in the standard of living, a
16 reduction in the value of housing, and in the ability
17 to sell homes and possibly even an increase in family,
18 social and community health problems.

19 And that's important, Madam Chair, Mr.
20 Martel, I suggest, at least it is for that reason that
21 I took you to the evidence before you which indicated
22 what the effects on the social fabric of communities in
23 the area of the undertaking is from the forest products
24 industry and that is why Mr. Watson gave evidence about
25 the results of this industry on various economic

1 measures. It becomes important to look at what the
2 residential characteristics of a community are, what
3 their tax base is, what their municipal assessment
4 dollars are, because without that you can't determine
5 whether there's going to be an adverse impact, and he
6 did both.

7 He also looked at it at the public and
8 governmental level moving back from a pure community
9 level. And it was his evidence, again talking about
10 unduly restricted conditions on wood supply, that a
11 significant amount of outmigration, departure of
12 people, out migration would produce wastage in terms of
13 existing municipal capital infrastructure and, in
14 addition, it would produce an increase in federal or
15 provincial spending for unemployment insurance,
16 obviously at the federal level, and relocation at the
17 federal and provincial levels, and relocation
18 assistance as well as increased provincial spending for
19 grants, special purpose grants, incentive programs,
20 municipal grants and the like.

21 It was Mr. Watson's unequivocal opinion
22 before you based on all of those studies which he had
23 done that without question the forest products industry
24 is of critical importance to the economy of the area of
25 the undertaking. And what that translates to, and this

1 was his language, to the stability of the relatively
2 fragile economy of the communities within the area of
3 the undertaking. It was his evidence that an adverse
4 impact to the industry would have very serious effects
5 upon the economy of the communities.

6 You also heard, Madam Chair, Mr. Martel
7 from Mr. Michael Ross, you may remember his evidence,
8 he was the other witness on the OFIA/OLMA panel 2 of
9 evidence. Mr. Ross is also an economist. He prepared
10 two reports which he described to you. The first he
11 titled An Economic Profile of the Ontario Forest
12 Industry, and I wish to just highlight some of the
13 evidence that you heard from him in that regard.

14 It was Mr. Ross' evidence that the
15 forestry services sector in 1985 employed close to
16 6,000 people in Ontario in addition to the 72,000 jobs
17 in Ontario created directly by the forest industry.
18 You remember the 72,000 dollar (sic) number is one
19 given to you earlier by Ms. Coke.

20 I'm sorry, I said dollars. Mr. Cassidy
21 said I said dollars. Jobs, I do mean jobs. It's a
22 Freudian slip.

23 There were in Ontario, Mr. Ross said,
24 approximately 172,000 jobs in 1985 which were directly
25 in the forest industry or supported by it.

1 Specifically in the area of the undertaking in 1986 Mr.
2 Ross indicated that the forest products industry
3 employed approximately 36,000 thousand people. That
4 compares to employment numbers for the mining and
5 primary metals sector of approximately 29,000 people,
6 and a lower number still for the tourism sector.

7 It was Mr. Ross' conclusion, based on the
8 study which he conducted, that the forest industry made
9 a larger and more direct contribution to the area of
10 the undertaking than did any of the other industries
11 prevalent in the area of the undertaking, although the
12 mining and primary metals sector was very close behind.

13 I want to deal, Madam Chair,
14 Mr. Martel, briefly with the suggestion that over time
15 other industry sectors could substitute in a meaningful
16 economic way for the forest products sector in the area
17 of the undertaking.

18 You have direct evidence before you that
19 that is not the case. You heard not only from Mr. Cam
20 Watson on this issue but from members of the
21 communities in which various industries operate. And,
22 in particular, I'm speaking of tourism and the
23 suggestion that from time to time seemed to be present
24 at this hearing that tourism was a viable alternative
25 or substitute to the forest products industry.

1 Mr. Mel Tigson, for example, is a tour
2 outfitter and he testified at the Red Lake satellite
3 hearing, you may recall, and it was his evidence that
4 while in the last decade people in the area of the
5 undertaking have become more aware of the tourism
6 potential, he said:

7 "At the same time we have realized
8 that that particular industry will not
9 take over and ensure our livelihood.
10 Tourism is a form of entertaining
11 diversification, it is seasonal and it
12 has its ups and downs and can only
13 complement the forest industry. Tourism
14 itself cannot support an area."

15 Mr. Cam Watson, as I indicated,
16 specifically addressed this issue in his evidence. He
17 was asked whether tourism could serve as a substitute
18 in the short or long term for the forest products
19 industry in the area of the undertaking, and I'd ask
20 you to consider his answer which is found at Volume 184
21 commencing at page 32319 and continuing over to page
22 32322.

23 He made it quite clear that tourism as a
24 much more seasonal form of occupation than forestry is
25 much more impaired as an industry in any sense of an

1 ability to sustain a full-time economy.

2 It was Mr. Watson's evidence that tourism
3 can supplement an industry base already present in
4 northern Ontario communities but it cannot serve as a
5 mainstay.

6 He also said that it was not a matter of
7 substituting a tourist job for a forest job, he said
8 you shouldn't look at it as substituting one for the
9 other because you might have to substitute three or
10 four or five tourism jobs to be the equivalence of one
11 forestry job, and that's because the forestry job, he
12 said, carries with it additional construction
13 expenditure and additional assessment.

14 What he basically said, Madam Chair, Mr.
15 Martel, is that one should be very loathe to trade
16 existing employment commitments and existing job
17 positions, to trade them off against jobs that may or
18 may not evolve in the future.

19 Mr. Michael Ross also addressed this
20 issue in his evidence. He did it specifically in the
21 context of the provincial revenue dollars generated by
22 tourism verus the forest industry, and just to put that
23 into context for you - I don't propose to review his
24 evidence in detail - but he said that the forest
25 industry generated approximately \$4.7-billion worth of

1 sales in 1986 while in the same period tourism
2 generated expenditures in the same year of about
3 1.3-billion.

4 Madam Chair, Mr. Martel, quite rightly
5 the question could be put to me: Why is all this
6 relevant? It's all very well and good, Ms. Cronk, and
7 we understand that the industry plays an important part
8 in the area of the undertaking, what do you want us to
9 take from this?

10 And my answer to that is simply this:
11 You have evidence before you that the forest industry
12 is highly vulnerable to competitive conditions in the
13 world market and economic conditions generally. We
14 called before you the presidents of two major pulp and
15 paper forest products companies, Mr. Ted Boswell of
16 E.B. Eddy and Mr. Linn MacDonald and a senior executive
17 vice-president of Abitibi-Price Inc., specifically to
18 outline for you what it is that this industry was
19 facing at the time they gave evidence and in terms of
20 what they projected or expected for the future.

21 They told you that it's a highly
22 competitive industry both nationally and
23 internationally, they confirmed that comparatively
24 speaking Ontario is a high cost jurisdiction, and they
25 said unequivocally that for the industry to continue

1 with its commitment in the area of the undertaking the
2 forest industry must remain competitive.

3 You also heard from Mr. Robert
4 Lafreniere, president of A&L Lafreniere Lumber Limited,
5 a different kind of company, carrying out a similar
6 role but on a different scale in the area of the
7 undertaking, and he confirmed that in his industry
8 sector as well those competitive conditions were the
9 reality.

10 For example, you heard that the pulp and
11 paper and lumber industry is a very capital intensive
12 business. You heard, for example, that Abitibi-Price -
13 this came from Mr. Linn MacDonald - has invested an
14 average over the last 10 years of approximately
15 \$200-million per year in new facilities or
16 modernization projects in Ontario.

17 You heard from him and from Mr. Boswell
18 that the costs of production and product delivery must
19 be competitive in Ontario if the industry is to
20 maintain its position in world markets.

21 And let's just take Mr. Linn MacDonald's
22 evidence from the perspective of a company like
23 Abitibi-Price. He provided you with specific examples
24 of how the competitive position of this industry is
25 affected by general economic conditions and competitive

1 conditions nationally and on the world markets and he
2 gave you specific examples of how then, then, at the
3 time of his evidence, erosion was already beginning.

4 He told you that Abitibi-Price, for
5 example, that 80 per cent of the newsprint from the
6 Abitibi-Price newsprint mills in Ontario is marketed to
7 the United States and that all of those markets are
8 highly competitive. He said that notwithstanding that
9 Abitibi-Price is the largest producer of newsprint in
10 North America it has only about a 14 per cent share in
11 the market in North America.

12 And perhaps this explains the
13 vulnerability the most graphically. Mr. MacDonald told
14 you that in 1985 Canada and southern United States were
15 approximately comparable in terms of the delivered cash
16 cost of newsprint, the cost to get it there, directly
17 competitive. However, by 1987 that delivered newsprint
18 cost in Canada was about \$18 per metric tonne more
19 expensive than newsprint produced in the southern
20 United States, 1987.

21 By 1988, one year later, the difference
22 in cost between newsprint produced in Canada and
23 newsprint produced in the southern United States, which
24 he told you was their market, was about \$63 per metric
25 tonne. He also told you, Madam Chair, Mr. Martel, that

1 a one-cent difference in the exchange rate between the
2 United States and Canada for their industry, for his
3 company, made a difference of about \$8-million right to
4 the bottom line each year. That's an extraordinary
5 number, in my submission.

6 Mr. MacDonald was clear and unequivocal
7 in his evidence that proper timber management is in the
8 best interest of Abitibi-Price in order to provide a
9 long-term wood supply. He stated in evidence before
10 you that since 1980 Abitibi-Price has invested
11 \$8.5-million over and above any compensation or cost
12 sharing arrangements with the government on
13 reforestation.

14 There are two numbers from his evidence
15 that I should clarify on this for you, Madam Chair. In
16 our written argument at paragraph 58 I refer to
17 evidence which he gave regarding expenditures in the
18 amount of \$39-million. That amount included
19 contributions both to road construction and
20 regeneration. What Mr. MacDonald told you was that of
21 that amount, \$8.5-million was a contribution by the
22 company to reforestation products.

23 It was Mr. MacDonald's evidence that
24 there's nothing that will make Abitibi-Price
25 uncompetitive faster than a series of terms and

1 conditions which increase unnecessarily - that's the
2 language he used - unnecessarily the cost of doing
3 business through the imposing of rigid rules and
4 regulations that are not required to be followed by its
5 competitors.

6 Mr. Lafreniere and Mr. Boswell provided
7 similar evidence to you in the context of their
8 companies and companies like theirs. Mr. Boswell, for
9 example, spoke about the market share of E.B. Eddy in
10 1986 and of the fundamental need of his company and
11 companies like it to remain competitive in the area of
12 the undertaking.

13 And Mr. Lafreniere, in the context of his
14 type of company, described what competitiveness meant
15 for those kinds of companies and he said to you that
16 for companies of his kind they too had to ensure that
17 they remained competitive and he spoke to you
18 specifically about the impact by way of illustration of
19 the introduction of the export tax in 1986.

20 And he told you these are real examples
21 of what can happen with the regulatory change for these
22 companies. He told you that once that tax was
23 introduced in 1986 his company suffered a 25 per cent
24 reduction in the market share that it held in the
25 United States and that its competitors includes

1 sawmills from British Columbia, Quebec and northwestern
2 United States. That's simply an example that he
3 provided to you of the reality of trying to do business
4 in a regulatory environment that has direct impacts on
5 the ability to deliver product and the cost of
6 delivered product.

7 Again, I step back from all of this,
8 Madam Chair and Mr. Martel, to try to explain from the
9 Industry's perspective why this evidence is so
10 fundamentally important. And perhaps the best way that
11 I can explain it is this: This hearing began on May
12 the 10th, 1988. At that time the province was headed
13 into what many economists thought might prove to be a
14 very serious recession. We had quite a serious dilemma
15 on behalf of the OFIA/OLMA in terms of preparing to put
16 evidence before you in this case, and I'm saying so
17 with complete candor.

18 The dilemma was essentially this: How
19 best to describe to the Board what our clients and
20 others knew was coming but had not yet arrived in a way
21 that didn't invite the, I suggest, too easy and
22 unthoughtful and also very unfair criticism that's
23 often levied at Industry by those who don't depend on
24 it for their survival, that Industry was exaggerating
25 economic conditions for its own purpose.

1 In other words, Madam Chair, Mr. Martel,
2 those in this room perhaps don't need to be reminded
3 that it's very easy to stand up and point a finger at
4 an industry like the forest products industry and say:
5 Oh, they always say that, they always say jobs are at
6 risk and they always say they have to remain
7 competitive and times are tough. So that we had a
8 dilemma at the outset of this hearing of how to put
9 evidence before you that demonstrated that without
10 inviting what, I suggest to you, is that kind of
11 careless and too easily made criticism of Industry.

12 But over time the dilemma took care of
13 itself because events overtook us all, and by the
14 beginning of 1990, which is when the Industry began its
15 actual evidence before you, in the spring of 1990, the
16 recession had arrived, as I recall even federal
17 politicians had begun to use the R word. But its
18 effect then was only just beginning to be felt and I'd
19 like to just remind you of the chronology.

20 On February the 5th, 1990 the direct
21 evidence presented by the Industry began, it ended on
22 August the 21st, 1990. On December the 12th, 1990 Mr.
23 Michael Ault, president of the Ontario Lumber
24 Manufacturers Association at the time appeared before
25 the Board, and I would like to just take a moment and

1 read to you what he said when he announced that the
2 OLMA was required to withdraw from this hearing. That
3 was December of 1990, Madam Chair, Mr. Martel, and this
4 is found at transcript Volume 272 commencing at page
5 49101. He said:

6 "The Ontario Lumber Manufacturers
7 Association has always supported
8 environmentally sound timber management
9 practices. Lumbermen are very concerned
10 with the proper management of the timber
11 resource as we all derive our livelihood
12 from the forest. When we began
13 preparations for the hearing in 1987 and
14 1988 we did so with enthusiasm and
15 vigor. We did not realize then how long
16 the process would take or how much longer
17 it may take to completion."

18 Parenthetically he was somewhat in good
19 company on that square, I suspect. He went on to say:

20 "Due to the current resession that has
21 hit the lumber industry harder than any
22 other sector of the economy, the Ontario
23 Lumber Manufacturers Association can no
24 longer financially support itself at
25 the hearing and, therefore, must

1 withdraw. As lumbermen we have always
2 supported environmentally sound timber
3 management practices but we must withdraw
4 from the process as we are no longer
5 financially able to support ourselves
6 being a party."

7 That was in December, 1990.

8 The point, Madam Chair and Mr. Martel, is
9 that since this hearing began the forest industry in
10 Canada including in Ontario has undergone a massive
11 economic downturn. And I suggest to you that the
12 evidence of that is before you.

13 I ask you to look, for example, at the
14 updated statistics that were provided to you in
15 response to your interrogatories of the parties. Those
16 updated statistics that were provided to you indicate
17 that the contribution of the forest industry to the
18 provincial tax base has declined since the start of the
19 hearing. This has occurred, we submit, because of
20 production volume curtailments caused by the economic
21 downturn and the impaired competitive position of the
22 industry in the world market.

23 Mr. Ross' economic profile you asked to
24 have updated. The updated table of contribution of the
25 industry to provincial revenues through taxes, stumpage

1 charges, and area charges shows a precipitous decline
2 from \$898-million in 1989 to less than \$550-million in
3 1991. And I give you those years in particular
4 because, of course, as I mentioned a few moments ago,
5 the hearing started in 1988, so going into the hearing
6 in 1988/1989 we had an industry that was contributing
7 \$898-million in 1989, by 1991 it was \$550-million.
8 That's a 39 per cent decline in revenues from one
9 industry alone. And it represents, I suggest, a
10 startling illustration of the economic difficulty being
11 experienced by both the forest industry and the
12 province.

13 Dr. Balsillie during his evidence on the
14 MNR's reply panel No. 4 noted that for the first time
15 since the Second World War government revenues have
16 been less than in the previous year.

17 What all of this comes to on this aspect
18 of the updated information provided to you, Madam
19 Chair, is that the ability of the Industry to
20 successfully compete in the world market has been
21 impaired and you have that evidence in front of you.
22 That is illustrated by the extent to which the Industry
23 is able to contribute to provincial revenues.

24 And what that in turn means, we submit,
25 is that the Board should be mindful of the fact that

1 some of the terms and conditions sought by some of the
2 parties in this hearing are simply unaffordable.

3 And we suggest to you that regulation not
4 demonstrated to be necessary, to be necessary to
5 protect the environment should not be imposed by the
6 Board with resultant negative economic impact on the
7 forest products industry and, therefore, on northern
8 Ontario. Only a healthy forest industry, I suggest,
9 Madam Chair and Mr. Martel, will be able to contribute
10 to a healthy northern and provincial economy.

11 So that we start our final submissions to
12 you after four years of evidence in this case by
13 suggesting that you examine the terms and conditions
14 that have been proposed by the various parties to
15 consider, first, the necessity of those terms and
16 conditions given the evidence before you regarding the
17 social and economic climate in the area of the
18 undertaking and the circumstances facing the Industry,
19 that you examine the necessity for the terms and
20 conditions, that you examine their practicality, that
21 you examine their affordability, and that you examine
22 their implications for the competitive position of the
23 forest products industry.

24 There is also considerable evidence
25 before you again, I suggest, uncontradicted - and I

1 don't propose to review this in detail - but you have
2 received considerable evidence that's quite specific
3 about the type of commitment that the forest products
4 industry has to the area of the undertaking, what
5 they've done in local communities and the involvement
6 of their people and the way in which they contribute
7 funds to the health of the communities in which they
8 live, and I'd ask you to consider specifically the
9 evidence of Mr. Linn MacDonald as to the extent of
10 capital investments by his company.

11 He told you that the capital investment
12 of Abitibi-Price in this province have totalled over
13 \$2-billion in the last 10 years, that that company
14 employs over 2,100 people in Ontario, and that it's
15 contributed over \$12-million to the communities in
16 which it operates in northern Ontario.

17 You heard similar evidence from Mr. Nick
18 Saltarelli, also of Abitibi-Price but in the Iroquois
19 Falls division of the role played by that company in
20 Iroquois Falls and the surrounding community. Mr.
21 Boswell on behalf of E.B. Eddy provided you in Exhibit
22 1037 with a list of the type of donations granted in
23 1988 and 1989 by E.B. Eddy to some 42 community
24 organizations ranging all over the map in terms of
25 interest, their type of interest or type of

1 organization, from hospitals to community-based
2 organizations. There was also evidence that E.B. Eddy
3 has spent about \$300-million in capital funds over the
4 past several years in upgrading and expanding existing
5 facilities, and I would ask you to consider that
6 evidence.

7 The modern reality, I suggest, for this
8 industry, and this has been established in the evidence
9 before you, is that it must remain competitive. The
10 consequences of not doing so is the ceasing of doing
11 business. And I suggest to you that the accuracy of
12 that statement is more readily understood perhaps today
13 than it was in May, 1988 when the hearing began.

14 I also ask you to consider this: That
15 the evidence you heard on these issues came from Mr.
16 Ted Boswell, as I said, Mr. Linn MacDonald, Mr. Robert
17 Lafreniere, Mr. Cam Watson and Mr. Michael Ross on
18 behalf of the Industry and from Ms. Alison Coke, among
19 others, on behalf of the MNR, and what they basically
20 told you is who the forest products industry is, what
21 its role is in the area of the undertaking and in the
22 province as a whole and why that's important.

23 There was no evidence before you that was
24 designed to, or which can in any way contradict the
25 evidence of those five witnesses on those five issues.

1 You heard from other economists but not on these
2 issues.

3 For example, Forests for Tomorrow called,
4 and I referred to some of their evidence earlier,
5 called Mr. Robert Muller and Mr. Peter Morrison. Mr.
6 Muller is an economist, Mr. Peter Morrison is a forest
7 policy analyst, and their evidence concerned
8 socio-economic planning and its place in environmental
9 assessments. They did not talk about the forest
10 products industry, its role in the area of the
11 undertaking, its significance in the economic situation
12 in northern Ontario or in the province, that's not what
13 their evidence dealt with.

14 The OFAH called Mr. Peter Victor and Mr.
15 Atif Kubursi. Their evidence, similarly, did not deal
16 with these issues, they are and were qualified as
17 economists but their evidence dealt with the tools for
18 decision-making in environmental assessments on
19 economic issues, it did not deal with the economic
20 conditions of the area of the undertaking, the
21 industries that establish the economic base of northern
22 Ontario or impact on any of those industries, including
23 the forest product industry by the outcome of this
24 hearing.

25 The only evidence before you on those

1 issues is from the Industry witnesses that I have
2 identified for you and from the MNR economic evidence
3 led early on in this hearing. So I you to accept that
4 as a matter of law what follows from that is that the
5 evidence of those individuals is essentially
6 uncontradicted by any other evidence before you and
7 that it should be accepted by you as an accurate
8 description and characterization of who the Industry
9 is, what its role is, its need to remain competitive,
10 and the negative impact that will follow if
11 unnecessarily restrictive conditions on wood supply are
12 imposed in the form of regulation by this Board through
13 terms and conditions that have that effect.

14 Madam Chair, Mr. Martel, I propose to
15 move to the nature of the undertaking in a more
16 detailed way and the position of the Industry on that.
17 I don't know if now would be an appropriate time for
18 you to take your break or...

19 MADAM CHAIR: Yes, we can take our break,
20 if that's convenient for you now, Ms. Cronk. 20
21 minutes.

22 MS. CRONK: Thank you.

23 ---Recess at 10:00 a.m.

24 ---On resuming at 10:25 a.m.

25 MADAM CHAIR: We're ready to proceed, Ms.

1 Cronk.

2 MS. CRONK: Thank you, Madam Chair.

3 At the commencement of our submissions
4 this morning I indicated to you that what this hearing
5 in essence was and is, in our view, is a hearing about
6 timber management. I'd like to deal briefly with some
7 of the propositions advanced by certain of the other
8 intervenors directly or indirectly that, in our
9 submission, seek to change the nature of the
10 undertaking or to enlarge its purpose beyond that
11 contemplated by the proponent and by this hearing.

12 Mr. Freidin argued on Monday before you
13 that a number of intervenors, specifically Forests for
14 Tomorrow and the OFAH/NOTOA Coalition, have continued
15 notwithstanding, he suggested, the Board ruling of
16 January, 1990 to attempt to do indirectly what they are
17 precluded from doing directly. And what he meant by
18 that, as I understood his argument, is that they have
19 continued to make efforts to have the purpose of the
20 undertaking redefined or reshaped to fit issues which
21 they suggest are relevant; specifically, to encompass
22 such matters as forest management, in the case of
23 Forests for Tomorrow, to encompass what they call
24 integrated forest planning.

25 We support the submissions made by the

1 MNR through Mr. Freidin on Monday that efforts to do so
2 are efforts to do indirectly what cannot be done
3 directly, that is, to change the purpose of the
4 undertaking that is before you for consideration.

5 This case is not about forest management,
6 it is about timber management. Under subsection 5(3)
7 of the Environmental Assessment Act, Madam Chair, as
8 the Board is of course aware, it is the responsibility
9 and the right of the proponent to define the nature of
10 the undertaking. In this case the MNR as proponent
11 defined the undertaking as timber management.

12 In the Board's ruling of January 17th,
13 1990 you describe the undertaking that was before you
14 and in your ruling of February the 23rd, 1990 you
15 specifically addressed the purpose of the undertaking,
16 and what came from your February 23rd, 1990 ruling, as
17 our clients and we understood it, was a very clear
18 ruling that the purpose of the undertaking could not be
19 reshaped or redefined so as to accommodate the
20 objectives or the interests of an intervenor's case.

21 That, I suggest, was the reality at law
22 from the outset of this hearing, but it was confirmed
23 in a jurisdictional interpretation by you, the Board,
24 in February of 1990. So that if there was any
25 uncertainty, I suggest there was not, but if there was

1 any uncertainty or debate about the issue, it was put
2 to bed in February of 1990.

3 And I say to you that this hearing is
4 timber management and not forest management because
5 what your ruling meant in February of 1990, as we
6 understand it, is that an intervenor cannot cause the
7 purpose of the undertaking to be redefined, whether
8 more broadly or more narrowly. Lawyers in other
9 contexts might describe that principle as reading into
10 the purpose of the undertaking or narrowing down the
11 purpose of the undertaking. Neither of those, I
12 suggest, is open to an intervenor, it is open only to
13 the proponent when it comes to describe the purpose of
14 the undertaking.

15 It's our submission that the purpose of
16 this undertaking has been clearly and unambiguously
17 defined by the proponent from the beginning. This is
18 not a situation, I suggest, where there was any legal
19 ambiguity about it at the beginning. It's not a case,
20 I suggest, where any interpretation argument arises,
21 that happens only when there is ambiguity, and no
22 amendment to the purpose of the undertaking has been
23 sought by the proponent.

24 The MNR said on the first day of this
25 hearing and has said frequently throughout that the

1 approval being sought is for timber management on Crown
2 lands within management units. And I repeat, Madam
3 Chair and Mr. Martel, that that is the hearing the
4 Industry chose to participate in during the course of
5 these last four years, that's the case that the
6 Industry led evidence on, that's the case that the
7 parties, including the Industry, had notice of, not
8 some other case defined in a different way by persons
9 other than the proponent after notice was given.

10 And I ask you to consider the notice, the
11 referral notice in this case that was delivered to the
12 Board by the Minister of the Environment, that is
13 Exhibit 1, and I should say in that regard, Madam Chair
14 and Mr. Martel, that I knew when we delivered our
15 written submissions and the length that they were that
16 despite the best effort of men, women and mice there
17 would be the odd typographical error made in it, and
18 several places in those submissions, three that I have
19 discovered over the course of the last several days,
20 have referred to that notice as having come from the
21 Minister of Natural Resources. I know and the Board
22 knows that notice came from the Minister of the
23 Environment. So I don't propose to give you an errata
24 to correct that, but I would ask you to read it where
25 that appears as referring to the referral notice. I'm

1 referring to Exhibit 1 in those submissions.

2 And that notice from the Minister, we
3 suggest, in requiring the Board to hold a class
4 environmental assessment hearing, made it quite clear
5 that the hearing related to an undertaking described by
6 the Minister of Natural Resources as the, the Timber
7 Management Class EA. And the notice from the Minister
8 of the Environment also made clear, we suggest, that
9 the hearing be held related to, first, the acceptance
10 of the environmental assessment; and, secondly, the
11 approval to proceed with the undertaking.

12 Now, I know that that language is clear
13 on the notice and one says: Why are we talking about
14 the obvious? And I suggest to you that it isn't always
15 as obvious as merely saying the word suggests. What
16 flows from that is the jurisdiction of the Board. And
17 the important point in our submission is this: That
18 you derive your jurisdiction in this case from, first,
19 Section 12 of the Environmental Assessment Act under
20 which you are authorized and empowered by the statute
21 to hold this hearing; secondly, by the specific
22 provisions of subsection 12(3) which define what the
23 Board can do in holding a hearing of this kind; and
24 then, thirdly, with respect to the notice itself that
25 came from the Minister of the Environment. And it is

1 to those sources, we suggest, that as a matter of law
2 ones goes to define what the jurisdiction of the Board
3 is.

4 We suggest that when you look at what is
5 in that notice, the referral notice from the Minister
6 of the Environment and when you look at what the
7 proponent defined the nature of the Class EA to be, it
8 becomes clear that what is before you is timber
9 management as described by you in your January, 1990
10 ruling and the purpose of the undertaking as described
11 by the proponent.

12 It is respectfully submitted that the
13 suggestion by some other parties that the nature or
14 purpose of the undertaking extends in scope to forest
15 management really has had the effect of masking - I
16 don't say deliberately - but it's had the effect of
17 masking from time to time what the purpose of this
18 undertaking really is, and it's our position, Madam
19 Chair and Mr. Martel, that other issues that have
20 arisen during the course of this hearing, in some cases
21 and not in all, but in some cases do have aspects that
22 arguably bear on the issue of timber management but
23 fundamentally they are not the purpose of the
24 undertaking and they are not the undertaking that is
25 before the Board for consideration.

1 Many of the concepts, for example, that
2 you heard about as the hearing evolved weren't really
3 even well defined in the scientific community in
4 Ontario at the time that they were raised in this
5 hearing, some still are not. So that what you had was
6 an evolution of thinking emerging on the fore of the
7 hearing as it progressed that reflected emerging
8 thoughts, concepts and issues in the scientific
9 community.

10 None of that means that they have
11 anything to do with what the purpose of this
12 undertaking is as defined by the proponent. For
13 example, the concept of landscape management; that
14 term, we suggest, has been used by Forests for Tomorrow
15 interchangeably or at least by their witnesses from
16 time to time interchangeably with ecosystem management.

17 The first mention of that phrase at this
18 hearing, that we could find based on our review of the
19 evidence on our computer searches, was during FFT's
20 panel 5 the statement of evidence of Crandall Benson.
21 That was on January the 16th, 1991. I'm referring now
22 to landscape management. The hearing, of course, began
23 in May of 1988.

24 In other words, this concept was pursued
25 at this hearing two and one half years after the

1 hearing began, after the MNR and the Industry had
2 completed their evidence on harvesting, access,
3 renewal, maintenance and effects, the evidence was in
4 from the proponent and from the Industry.

5 Now, I stand to be corrected, but our
6 computer search indicated that the first time that
7 concept really emerged before you was at that point in
8 time, and I point to that as an illustration of how as
9 the hearing evolved concepts emerged that had not been
10 the subject of debate or real issue in this hearing
11 before.

12 And it is our submission to you, Madam
13 Chair and Mr. Martel, that when you come to consider
14 some of these issues, you should in your final
15 decision - and we ask you to do this - clearly affirm
16 that the purpose of the undertaking in this case is as
17 stated by the proponent nothing more, nothing less, as
18 stated by the proponent. And in doing so we suggest
19 regard should be had or you may find it useful to have
20 regard to certain fundamental principles.

21 And I don't propose to review any case
22 law on this, Madam Chair and Mr. Martel. I suggest to
23 you that the principles I'm about to outline are
24 fundamental and well established, they relate to the
25 jurisdiction of the Board and they provide a framework

1 within which one can translate that jurisdiction into
2 consideration of the issues before you on the evidence.

3 And I start from the proposition that I
4 mentioned a few moments ago and, that is, that under
5 subsection 5(3) of the Environmental Assessment Act it
6 is the responsibility and the right of the proponent of
7 a class environmental assessment to define the nature
8 of the undertaking. In this case the MNR as proponent
9 defined the undertaking as timber management.

10 The Board in its ruling of January the
11 17th, 1990 described the undertaking, and it's our
12 submission to you that the Board was obliged as a
13 matter of law to hold the hearing relating to the
14 undertaking described by the Minister of the Environment
15 in the notice, the referral notice which this Board
16 received. The undertaking was described by the
17 Minister in that notice as the Timber Management Class
18 EA.

19 I suggest to you as a fourth fundamental
20 principle there's nothing, if I may be permitted to
21 characterize it this way, there's nothing unique about
22 this hearing in this sense, that the Board as a matter
23 of law in the course of the hearing is charged to
24 conduct and is obliged to consider only the evidence
25 that is relevant to the undertaking and the purpose of

1 the undertaking as defined.

2 Now, that becomes important as an
3 administrative law principle, Madam Chair and Mr.
4 Martel, for this reason. Sometimes when evidence is
5 tendered or first offered for consideration its
6 relevance isn't easily determined and it's not unusual,
7 for example, before other tribunals or before the
8 courts for evidence to be received because it is
9 potentially relevant, because it may in some
10 fundamental aspect go to the heart of what's before the
11 decision-maker to determine, but at the end of the day
12 when the evidence has been received and when there's a
13 full context in which to assess the importance of the
14 evidence that you have received, that is when, in our
15 submission, it becomes important to determine what is
16 relevant to the task that you are originally assigned
17 in the sense of your jurisdiction.

18 It's not say not that the evidence may
19 not be useful and interesting for other purposes and
20 may in some aspect bear on your thinking in the matters
21 that you are considering, but in the end, from a
22 jurisdictional point of view, it becomes important, we
23 suggest, to focus on what the undertaking is and what
24 the purpose of the undertaking is and what you were
25 asked to do in the referral notice that you received

1 from the Minister of the Environment.

2 At the end of the day, the functional
3 task becomes different at the end of the hearing.
4 During the course of the hearing admissibility is the
5 issue and that's determined based on relevance; at the
6 end of the day it's weight and significance that become
7 important. And it's possible at the end of the day, in
8 our submission, to sort out what of all of the evidence
9 is relevant to you to reach a decision on the matters
10 that as a matter of law you're obliged to decide upon
11 on and that, in our respectful submission, is not all
12 of the matters that have been raised before you.

13 It follows, we suggest, that the Board in
14 this case that you are neither required nor empowered
15 at law, by that I mean nor do you have jurisdiction, to
16 enter into a broad review of all MNR policies, programs
17 strategies and management objectives which, in some
18 aspect, may affect timber management in the area of the
19 undertaking. The fact that those aspects may have been
20 raised and that they may impact on other non-timber
21 policies, programs, strategies and management
22 objectives does not require this Board, nor empower you
23 at law, in our submission, to adjudicate or to
24 determine or to decide in those areas.

25 Were it otherwise, as a practical matter,

1 and an important matter I suggest, the proponent and
2 the other parties would have been entitled to the
3 opportunity to adduce different and further evidence to
4 put before you a full evidentiary base bearing on
5 decisions that you might make regarding the merits of
6 non-timber policies, programs, strategies and
7 objectives. And that's very important because evidence
8 addressing those issues, the parties would have been
9 provided an opportunity to introduce evidence
10 addressing those issues if they formed part of the
11 purpose of the undertaking. And perhaps the other
12 aspect that's fundamentally important is the notice
13 itself.

14 Were it not as I suggest it is to you as
15 a jurisdictional matter, notice of this proceeding and
16 the opportunity to seek participation in this hearing
17 would have been required for a significantly enlarged
18 category of persons and they would have been entitled
19 to come before you and to seek standing because they
20 would stand to be affected by any decision you might
21 make concerning non-timber policies, programs,
22 strategies and management objectives.

23 Let me give you an example of what I'm
24 trying to make clear here. That when I have said, as
25 I've now said several times this morning, that the

1 Industry chose to participate in a hearing about timber
2 management, that's what it understood from the
3 beginning based on the proponent's definition of the
4 purpose of the undertaking and based on the notice
5 which you had received was what this hearing was all
6 about. And as a matter of law it was our understanding
7 then, and it has subsequently been confirmed by you in
8 your ruling, that that purpose cannot be altered to
9 suit the objectives of intervenors, any intervenor.
10 What that meant was that the fundamental essence of
11 this hearing did not get converted from timber
12 management to forest management.

13 Had it, had it been fundamentally altered
14 to forest management, I'm saying to you that the
15 evidence you would have received would have been
16 different, that different parties may have been before
17 you, because a much broader category of persons would
18 stand to be affected by that decision, and you would...
19 Yes, sir?

20 MR. MARTEL: Let me ask you a question.
21 We still have to look at how those things though and
22 timber management itself are interrelated. I mean, one
23 must accept the evidence.

24 I understand that, I think I said some
25 time ago, you can't come in by the back door what you

1 couldn't get through the front door, but to suggest
2 that - and I'm not sure you're suggesting it, maybe
3 it's just what I understood you to say - that those
4 other policies that the MNR has that are involving
5 non-timber issues would have been substantially
6 different had we received them if we were empowered to
7 but weren't empowered, are not empowered to do it
8 because we're looking strictly at timber management.

9 I'm not sure where you draw the line, I
10 guess, and what I'm trying to get clear from you -- I
11 understand what the decision has to be, but I'm not
12 sure I'm clear on what you're trying to tell me about
13 the evidence that we received and listened to at least
14 and how it impinges on timber management or vice versa.

15 MS. CRONK: Let me try to explain our
16 view of the law on this and the practical aspect of it
17 in this way. I've used this language, I've said that
18 there are issues that have been raised before you which
19 have aspects which may bear on timber management.
20 There are other ways to describe that.

21 There may be issues that have arisen that
22 have timber management components. What is important,
23 in our submission, is that where there is a non-timber
24 objective, strategy or policy that has to your
25 satisfaction, not just because someone says it does, to

1 your satisfaction an aspect that affects timber
2 management you will wish to be satisfied at the end of
3 the day that there are mechanisms in place to ensure
4 that the link between timber management and the
5 non-timber management objective, strategy or policy is
6 in place, that it will be dealt with in a way that
7 ensures that it is addressed as it may affect timber
8 management.

9 Let me give you an example. As part of
10 the terms and conditions proposed by the Industry in
11 our planning proposals you're aware that a provincial
12 policy committee has been urged, that you accept and
13 approve a provincial policy committee. One of the
14 functions of that committee under the Industry's
15 propose terms and conditions is that it consider at
16 that level, at a provincial policy level, some of these
17 very issues that may have aspects affecting timber
18 management.

19 So, for example, the development by the
20 MNR and by the provincial government of an old growth
21 strategy which you've heard in the MNR's reply evidence
22 on panel No. 4 is underway in the sense that a
23 mechanism has been put in place for development of a
24 policy on that issue. That's exactly the kind of issue
25 that can be addressed by and is intended to be

1 addressed by a provincial policy committee.

2 But that's very different, I suggest,
3 than taking issues like that forest management, taking
4 an issue like forest management and saying all of the
5 issues, all of the intricacies that are involved in
6 forest management are on the table here because timber
7 management is a part of it.

8 I tried to envisage a practical example
9 of what I thought the prejudicial aspects of this were,
10 and just talking about forest management, if the notice
11 of referral from the Minister of the Environment in
12 this case had permitted of an interpretation that
13 suggested that forest management was at issue here, had
14 the proponent defined the undertaking in a way which
15 suggested that it was, and it did not, but had it done
16 that, I suggest to you that you might very well have
17 had the mining industry here as a full-time party
18 before you.

19 If forest management was on the table in
20 all of its aspects, because one of those aspects
21 affected timber management, you might well have had
22 representatives of the National Parks system, of the
23 Canadian regulators on Canadian Parks and the mining
24 industry here, because forest management is a much
25 larger concept than timber management, and I think in a

1 very practical, real way you could not say with
2 certainty that other persons who would stand to be
3 affected by decisions of that kind would not have
4 sought to be before you, that would be their decision
5 of course, but had they known the issue was going to be
6 approached in this large a way.

7 So that this is the Industry's position,
8 that the purpose of the undertaking was clear from the
9 beginning, it's unambiguous, it doesn't invite a debate
10 about its scope. It is clear and, as you yourselves
11 the Board said in your ruling in February of 1990, no
12 party to this hearing could have been under any
13 misapprehension about the purpose of this undertaking
14 as defined by the proponent; that given the way the MNR
15 introduced its evidence and what was in the notice in
16 this hearing, I suggest, is not a credible assertion.

17 All the full-time parties in this case
18 have been here on an active basis, they have been here
19 because they understood the hearing was of a certain
20 kind. I can't speak for others, I can speak for
21 Industry, and I say again that Industry was here for
22 four years in this hearing because it understood that
23 the purpose of this undertaking was as defined by the
24 proponent that it related fundamentally to timber
25 management and the provision of future wood supply to

1 Industry.

2 It follows from that that to the extent
3 that other parties to the hearing have sought in their
4 draft terms and conditions or their final terms and
5 conditions before you to have you adopt and endorse as
6 your own conditions which are designed to bring about,
7 encourage or regulate forest management or non-timber
8 management objectives as distinct from timber
9 management, those terms and conditions are beyond the
10 scope of the undertaking before you and the purpose of
11 this undertaking and ought to be rejected by you.

12 I agree, Mr. Martel, that it's difficult
13 to distinguish from time to time but if you approach it
14 in the framework of the principles that I ask you to
15 consider, it may be that that determination will become
16 clearer. Let me give you an example of the kind of
17 thing that's in some of the materials you received in
18 final argument.

19 The FFT in its terms and conditions
20 before you - and, again, I don't think we need go to
21 these but I'll tell you where they are - in condition
22 42(2) has suggested that the MNR be obliged to
23 establish a system of ecological reserves and protected
24 areas. In their condition 54(1) they propose that the
25 MNR develop and implement:

1 "A landscape planning and management
2 system."

3 A landscape planning and management
4 system. In their condition 56(1) they have proposed
5 that the MNR be obliged to develop a description of old
6 growth for each working group.

7 The OFAH/NOTOA Coalition - again, these
8 are by way of example - have suggested in their term
9 and condition No. 209 that there be a specific
10 requirement imposed on the MNR by the year 2000 to have
11 60 per cent of the raw material input for pulp and
12 paper production be comprised of recycled fiber.

13 Maybe I could just use that one as an
14 example. In our respectful submission there is a
15 wholly inadequate evidentiary base before this Board
16 that would permit the Board to make an informed,
17 Reasoned decision on a condition of that kind given
18 that the purpose of the undertaking was defined by the
19 proponent in a way that was clearly directed to timber
20 management.

21 Some of the conditions proposed by FFT
22 suggest that it's really quite different. A
23 requirement that the MNR develop and implement a
24 landscape planning system and management system is not
25 a timber management planning system. And that's why in

1 my earlier submissions I referred to the fact that
2 landscape management, as an issue, as a term, didn't
3 even emerge before you as a live issue in this hearing
4 until two and a half years after the hearing began.

5 How, in that context, can it be said that
6 the purpose of this undertaking extends in scope to
7 landscape management? I suggest to you that it just
8 can't. That's not to say that those issues shouldn't
9 be studied, and there are terms and conditions before
10 you which contemplate that, and that's not to say that
11 you shouldn't be satisfied, I suggest you should be,
12 that there are mechanisms in place by which the links
13 between issues of that kind and timber management, if
14 they exist, are going to be identified, developed and
15 dealt with. That's fair enough.

16 But that's quite different than asking
17 you to deal with it and to impose, through your terms
18 and conditions, a regulatory scheme that deals with the
19 merits and full aspects of those subject matters. I
20 suggest to you that that's not what this hearing is
21 about.

22 Another illustration of it. I've spoken
23 about forest management, I've spoken about landscape
24 management. Land use planning, issue No. 3. I suggest
25 to you that this hearing is not a land use planning

1 hearing, it never was and it still isn't, in our
2 submission. Our written submissions on this issue
3 begin at page 50 of Volume 1 and extend to page 63, and
4 I would ask you to consider those when you come to look
5 at these issues.

6 You heard extensively from Mr. Freidin on
7 this subject on Monday afternoon and I don't intend to
8 review in detail the reasoning that he advanced in
9 respect of this issue, but I do wish to clearly
10 indicate that it is the position of the Industry that
11 timber management does not and cannot, as suggested by
12 Mr. Freidin, be seen to involve fundamentally land use
13 decisions. We completely support his submission to you
14 that timber management planners do not have the
15 authority, the responsibility or provincial government
16 direction to turn timber management planning into land
17 use planning.

18 Now, Forests for Tomorrow sees this
19 hearing quite differently, and Mr. Freidin took you to
20 the portion of the transcript in which counsel for FFT
21 confirmed on the record that what they were looking for
22 was a fundamentally changed approach to land use
23 planning for forest land, that that was the thrust of
24 their case, and that that was the consistent element of
25 their case.

1 In our respectful submission, this is not
2 the nature or the purpose of the undertaking in this
3 case and FFT, by raising at the hearing broad issues
4 focussed on land use planning, cannot in that way
5 effect or seek an amendment to the nature or purpose of
6 the undertaking.

7 The issue, I suggest, is a fundamental
8 one on which the Board must rule, if only for the
9 purpose of distinguishing between those matters which
10 invite your specific terms and conditions and those
11 which do not. That can be accomplished, we suggest, by
12 affirming in your decision that the purpose of the
13 undertaking is as defined by the MNR. What's at issue
14 in this hearing, in our respectful submission, is how
15 timber management is to be carried out in the area of
16 the undertaking. Other policy developments,
17 strategies, programs and objectives, for example, the
18 MNR's endangered spaces program, its comprehensive
19 forest policy framework, have been established by the
20 proponent to identify where timber management
21 activities and other non-timber program objectives will
22 be achieved on Crown land, but they're not part of this
23 undertaking.

24 This issue has important implications, I
25 suggest, in this case on a number of issues and I've

1 said to you that it's a fundamental issue on which the
2 Board must rule, and I say that because a number of
3 things fall out of that ruling. You have the MNR and
4 OFIA on the one hand saying quite clearly that timber
5 management is not land use planning and that there's a
6 conceptual distinction which must be made. FFT sees it
7 differently, sees the purpose of this hearing
8 differently, and I say that because it was said on the
9 record.

10 When you decide that timber management
11 and that timber management planners are not to be seen
12 as land use planners, certain things fall out of that.
13 Let me give you this example. Mr. Marek's concept of a
14 division of the land base, a dividing up of the land
15 base between areas reserved for multi-purpose forestry
16 and those identified for single use in timber
17 management, that is a land use planning issue, leaving
18 aside entirely the practicalities of how one would go
19 about appropriately identifying as candidate areas for
20 division on one side or the other specific areas.
21 Embarking on the exercise is a land use planning
22 exercise.

23 Let me give you another example of what
24 falls out, in our submission, from this decision on
25 whether this hearing is land using planning, whether

1 timber management is land use planning. FFT's proposal
2 for roadless areas designated for management units in
3 the area of the undertaking, FFT's proposal for the
4 required establishment by the MNR of an ecological
5 reserve protected area system, those are concepts we
6 suggest that are intended to further objectives and
7 goals and values beyond timber management and they're
8 land use planning devices which could be used to
9 accomplish those things. They are land use planning.

10 You were reminded, I understand,
11 yesterday in the submissions by Mr. Freidin of certain
12 of the evidence given by Mr. Zane Smith on behalf of
13 Forests for Tomorrow. He specifically was questioned
14 about the roadless area concept in the United States
15 planning system. It was his evidence specifically that
16 the roadless area concept in reality is an exercise in
17 land use planning. He was asked whether decisions as
18 to what to do with areas that ended up coming out of
19 the planning process as roadless areas were decisions
20 all made at the land use planning level or higher, and
21 he said that was correct. I will point out as well
22 that there's been no analysis - let's just talk about
23 roadless areas for a moment - there's been no analysis
24 put before you of the impact or effects on wood supply
25 in the area of the undertaking of such an approach.

1 There's no analysis whatsoever before you as to what
2 that would mean on the purpose of the undertaking if it
3 were implemented at any scale.

4 We suggest to you that in the absence of
5 evidence as to what the impact will be of a particular
6 land use planning concept on wood supply, future wood
7 supply and the purpose of the undertaking, it's a
8 matter not to be dealt with, because then it would be
9 ruling with uncertainty and without knowledge of the
10 consequences that will flow from your order.

11 The same concerns apply, in our
12 respectful submission, to the OFAH/NOTOA Coalition's
13 proposal that 10 per cent of the total aggregate area
14 in each FEC type in each FMU remain in the oldest seral
15 state, age-class, the oldest age-class. No analysis
16 has been put before you of any kind on the impact or
17 effect on future wood supply in the area of the
18 undertaking of such an approach.

19 The same concerns apply with respect to
20 FFT's proposal for old growth reserves or set-asides.
21 You have heard that that matter is being studied
22 elsewhere, that there is a mechanism identified and
23 described to you in place to deal with it, but there
24 has been no evidence put before you of the impact or
25 effect on the purpose of the undertaking, future wood

1 supply in the area of the undertaking, if those
2 conditions by FFT concerning old growth reserves or
3 set-aside areas were implemented; again, leaving aside
4 entirely where you would do it and the scale of it and
5 you have to know or make some assumptions about those
6 things to assess impact.

7 You do, however, have evidence before you
8 from Michael Ross concerning the impact generally of
9 reserve areas, not in the context of old growth
10 reserves, but in the context of reserves under the
11 moose guidelines or reserves around water bodies, but I
12 suggest to you the principles are the same and that is
13 evidence on this issue that is before you.

14 You'll recall when I described Mr. Ross'
15 evidence earlier this morning that I said he prepared
16 two reports, the first report was an economic profile
17 of the industry that I referred to this morning, the
18 second was an economic input framework report, that's
19 Exhibit 1047, and in that report specifically Mr. Ross
20 and his colleagues analysed the impact of timber
21 management policies and practices on forest industry
22 costs.

23 The study showed that typically wood
24 costs increase by increasing the nature or scale of
25 reserves and that that includes costs associated with

1 the roads and with the planning and lay out of
2 reserves, and he described to you a case study that had
3 been undertaken to consider three different scenarios:
4 the impact of no reserves, the impact of existing
5 reserves, and the impact of an inflexible reserve
6 scenario under which the new timber management
7 guidelines would be applied without any flexibility at
8 all.

9 It was Mr. Ross' evidence that the
10 existing reserves, under the existing reserve scenario
11 that they remove approximately 12 per cent of wood
12 volumes available for harvesting while the application
13 of inflexible reserves would remove a further 11 per
14 cent.

15 Under the third scenario, an inflexible
16 reserve scenario, he demonstrated that that would lead
17 to a cost increase of \$1 per cubic metre of wood
18 harvested. What that means, of course, is an annual
19 cost increase to the Industry of approximately
20 \$20-million.

21 That was an effort, Madam Chair, Mr.
22 Martel, to analyse specifically the impact of certain
23 kind of reserves on wood supply and on cost to Industry
24 to deliver product. And I suggest to you that there
25 has been no similar, similar in generic type, no

1 analysis of that kind done or put before you with
2 respect to the impacts on wood supply of some of these
3 other suggestions that I've outlined to you.

4 There's also before you Exhibit 1035
5 which is a case study assessment of the impact of
6 protective guidelines on logging operations conducted
7 for Superior Forest Management Limited, and its
8 objective was to look and see if there was a meaningful
9 cost associated with moving to the new protective
10 guidelines focusing on the moose habitat and fish
11 habitat guidelines.

12 Mr. Ross testified with respect to that
13 case study that the effect of applying those
14 guidelines, again moose guidelines and the fish habitat
15 guidelines for that company, would be to increase costs
16 by between 45 to 59 per cent per cubic metre of wood
17 depending on the assumptions you made about the
18 harvesting blocks.

19 So, for example, the report took the
20 approach that the area of the undertaking would be
21 split into two equal parts or blocks, it postulated
22 that one block would be harvested in the short term
23 leaving the remaining block as reserves and moose
24 habitat to be harvested only after a 20-year period had
25 passed. The extent of the impact, I suggest, can be

1 set aside. The point is that the impact can be
2 assessed and an effort was made to look and see whether
3 it was purely hypothetical that there was a direct cost
4 associated with reserve systems of this kind and the
5 answer was yes. And an effort was made to give you
6 illustrations depending on the company, depending on
7 the type of reserve, depending upon the extent of it,
8 the extent of the reserve as to what that impact might
9 be.

10 It was Mr. Ross' general conclusion in
11 his evidence before you that timber management policies
12 and practices do matter in a very real economic sense
13 because they have a significant direct impact on
14 Industry costs and on the forest industry's ability to
15 assist in achieving the purpose of the undertaking, a
16 predictable and continuous future supply of wood. And
17 I say to you in summary that without some understanding
18 of the impact on the purpose of the undertaking of
19 concepts like old growth reserves or set-aside areas, a
20 10 per cent reserve or set-aside in favour of the
21 oldest seral state, even when that 10 per cent area is
22 movable within a unit, it doesn't matter if it's pulled
23 out of the production land base, the proposal for
24 roadless areas of an unspecified dimension and extent
25 all must be recognized as carrying with them direct

1 implications for achievement of the purpose of the
2 undertaking, that is, future wood supply.

3 And that's an entirely different and
4 serious issue, I suggest, from the issue that I started
5 with first and, that is, that many of these are
6 inherently in the nature of land use planning in any
7 event, such that they should not be regarded by you as
8 part of this undertaking or part of the purpose of the
9 undertaking.

10 In summary then the position of the
11 Industry on these issues is as follows: First, we urge
12 the Board in its decision to affirm the purpose of the
13 undertaking as defined by the proponent, we suggest
14 that there's no jurisdiction in the Board as a matter
15 of law to permit the amendment of the purpose of the
16 undertaking to accommodate objectives, whatever their
17 merit, of persons other than the proponent, and that it
18 follows from this that the Board cannot
19 jurisdictionally seek to impose terms and conditions
20 which are, in substance, land-use driven.

21 We suggest as a practical matter that the
22 following questions may help in this analysis. If the
23 purpose of the proposed term and condition is a
24 non-timber objective, if in looking at it you can see
25 that it's a non-timber objective as, for example, I

1 suggest a roadless area designation as a tourist area,
2 ask if it's a land use objective. If so, it should not
3 properly be the subject matter or be seen by you to be
4 the subject matter of the purpose of the undertaking.
5 You must ask in each case, we suggest, whether the
6 purpose of the proposed term and condition, if it's
7 related to non-timber objectives, is designed to
8 mitigate or minimize a demonstrated effect of timber
9 management.

10 In other words, what you're really
11 looking at is: What should be decided at the timber
12 management planning table, who has the authority and
13 responsibility for those decisions, are they properly
14 being dealt with elsewhere, are they properly being
15 dealt with elsewhere.

16 Because the danger, Madam Chair, Mr.
17 Martel, in taking an enlarged view of the purpose of
18 the undertaking in these issues is that the terms and
19 conditions to be imposed will end up endowing timber
20 management planners with a level and breadth of
21 authority that should never be at the timber management
22 planning table.

23 I propose to turn now, Madam Chair, Mr.
24 Martel, specifically to the issue of implementation of
25 the undertaking and to the various alternative methods

1 that have been described to you in evidence as to how
2 that might be achieved. And, again, I propose to deal
3 first with certain general principles and then to look
4 at the timber-related activities individually.

5 It is clear law, we suggest, Madam Chair,
6 Mr. Martel, that the Board may approve alternative
7 methods of carrying out the undertaking. As Mr.
8 Freidin pointed out, it's for that reason that months
9 and months and months literally, we calculated it,
10 months and months of evidence was spent on access,
11 harvest, renewal and maintenance because those are the
12 activities that make up the activity, as the Board has
13 characterized the undertaking those are the activity
14 components of the undertaking, and there are various
15 methods of carrying out those activities and that's why
16 you received all of that evidence.

17 We agree with the MNR that all methods
18 identified at this hearing of carrying out those timber
19 management activities should remain available to timber
20 managers in the area of the undertaking and that none
21 should be eliminated as a matter of general principle
22 because there will be circumstances and situations in
23 which they're required, in our submission. The Board
24 should not predetermine the appropriateness of various
25 methods for particular management units. I don't

1 suggest for a moment that the Board would intend to do
2 that, but if the Board adopts some of the terms and
3 conditions that have been proposed by some of the
4 intervenors in this case, that is the result that
5 follows from it; in effect, it's a predetermination of
6 methods that will be available for use on any
7 particular management unit, and we say to you as a
8 general principle that should not be done.

9 You've heard a great deal in this
10 hearing, Madam Chair, Mr. Martel, about the need for
11 flexibility at the field level in making timber
12 management activities decisions. We referred to that
13 in our written submissions to you as the flexibility
14 imperative and I wish to spend just a moment talking on
15 that and why, why it was in the evidence returned to
16 again and again.

17 The Industry has stressed the need for
18 flexibility in timber management activity
19 decision-making because, to put it simply, it's an
20 imperative that the Industry continue operating in the
21 area of the undertaking if the resource is to be
22 properly managed. It's submitted that all of the
23 professional foresters that you heard from, all of them
24 testified that such flexibility is necessary.

25 From the Industry's perspective there are

1 two aspects to this issue. The first is a social and
2 economic aspect which is what I dealt with in my
3 submissions to you this morning, and it's simply the
4 ability to carry on. But there's a second aspect and
5 that's related to proper resource management principles
6 and approaches.

7 Some of the evidence establishing the
8 need for flexibility at the field level is set out at
9 pages 36 to 42 of our written submissions, and I don't
10 propose to review that evidence, but I do point out
11 that even Mr. Benson and Mr. Marek agreed that it was
12 necessary, as did Mr. Mazur, and you may hear from some
13 of the other intervenors that they perceive that the
14 terms and conditions that they have proposed in their
15 final form permit of that flexibility.

16 Mr. Benson, for example, said quite
17 clearly before you that he hoped that the Board would
18 not come down with what he described as a number of
19 inflexible rules that were going to tie the forest down
20 for the future. Mr. Marek made it quite clear that he
21 thought it would be inappropriate to foreclose from
22 professional foresters any particular innovation
23 available in the scientific community if they have a
24 possible forestry application.

25 MS. SWENARCHUK: Could you give me the

1 citation for that, please?

2 MS. CRONK: Transcript Volume 258
3 commencing at page 46527.

4 Mr. Marek also confirmed during
5 cross-examination that, in his view, at the field level
6 it is important that professional foresters rely on
7 their past experience, make use of their own past
8 experience and that of others and of their intuition
9 and of their professional judgment. He agreed that in
10 order to get the job done - that's the phrase that I
11 was using in questioning of him - to get the job done
12 it is important that professional foresters have
13 available to them, and the question was: All of the
14 tools that modern, up-to-date, state-of-the-art science
15 can afford them, and he agreed with that proposition.

16 Mr. Mazur also testified that he was
17 concerned about blanket or rigid rules being set down
18 for the management of forests, and he talked about the
19 ability to rely on professional judgment and expertise
20 of professional managers, and I point that out to you
21 simply to indicate that this is actually an area that
22 when you examine the evidence I believe there's
23 agreement on, all of the professional foresters who
24 came before you agreed that this was necessary. Where
25 the area of difference is, is what does or does not

1 constitute flexibility, what, when you look at it, is
2 or isn't flexibility. It's always the gray area that
3 sparks the debate as opposed sometimes to the basic
4 principle and the basic principle is agreed upon.

5 I suggest to you that nowhere is the need
6 for flexibility more apparent than in consideration of
7 the various methods that you've heard about for
8 carrying out timber management activities. I would
9 like to turn first to the issue of access.

10 In the case of access, as we understand
11 the position of the parties, the only area of
12 disagreement between the Ministry of Natural Resources
13 and the Ministry of the Environment relates to road
14 closure and abandonment issues. Those are access road
15 planning issues. The important point, I suggest, for
16 purposes of the submissions I am about to make to you
17 about access is that the Ministry of the Environment
18 has accepted the MNR's evidence that any negative or
19 adverse effects to be occasioned by access for timber
20 management are outweighed by the benefits.

21 I say that to you because the Ministry of
22 the Environment has not proposed in its terms and
23 conditions restrictions relating to timber management
24 access, save for those dealing with road closure and
25 abandonment. It follows from that that they have

1 accepted and do not quarrel with, for the purposes of
2 their terms and conditions, the evidence led by the MNR
3 about the necessary outcome of a balancing of impacts
4 and benefits of access.

5 FFT on the other hand in their written
6 submissions to the Board list in considerable detail
7 the potential adverse effects that were identified in
8 the evidence from access, from timber management
9 access, that commences at page 111 of their written
10 submissions. The positive effects of access for timber
11 management, however, are not pointed out in the
12 argument, and there was evidence about that as well.
13 And I suggest that this challenge of and presentation
14 by Forests for Tomorrow of the negative, and only the
15 negative, effects of access in their written
16 submissions has been made because, of course, without
17 access, without roads there's no harvest.

18 So that if one wants to look at
19 introducing and effecting material restrictions on
20 timber management activities, you start at the
21 beginning, you start with access. Access is the gate
22 through which timber management occurs. If access is
23 stopped, timber management is stopped. That's, for
24 example, what in part road blockade injunction
25 application and proceedings are all about. If you stop

1 the road, it follows that you stop the harvest and you
2 stop the other related timber management activities.

3 I ask you to look at the list of effects
4 set out in Forests for Tomorrow's argument bearing two
5 things in minds: First, that the positive effects,
6 that there's evidence before you of positive effects of
7 access and that they extend beyond the obvious but
8 fundamental truism that they provide a road to get to
9 the forest to permit harvesting, that there are other
10 positive benefits identified. And, further, that it's
11 the evidence of MNR access experts before you that on
12 balance the positive effects of access outweigh the
13 negative effects. And I wish to ask you to consider -
14 I'm not going to review it all - but certain features
15 of the evidence that you heard on that.

16 You may recall that David Hogg was the
17 the principal witness for the MNR on the potential
18 effects of access on wildlife and it was his evidence
19 that the effects of access on wildlife can be avoided
20 entirely or mitigated by taking care not to disrupt
21 features of importance by following good construction
22 practices, by avoiding construction in wetland areas,
23 and by avoiding breeding areas or breeding times.

24 He specifically testified that generally
25 the MNR considers that the benefits of improved access

1 outweigh the disbenefits. He testified as well to the
2 following:

3 "Timber management requires access to
4 individual stands. Thus, development of
5 a road system of varying degrees of
6 permanence across a broad area is a
7 prerequisite to timber management. Once
8 in place these roads will be used by the
9 public seeking to use the non-timber
10 resources of the area."

11 He went on to identify a series of
12 concerns that arise from road construction, maintenance
13 and use and then said this:

14 "These concerns can be mitigated at
15 the time of construction during the use
16 period for the road or upon abandonment
17 of the road."

18 I ask you to consider as well the
19 evidence that you heard at the satellite hearings on
20 the issue of road building and access for timber
21 management purposes, and I suggest to you that there is
22 no consensus in northern Ontario that emerged on the
23 evidence that increased access to resources is
24 perceived as a negative effect of timber management.

25 You did receive evidence, for example, at

1 the Hearst satellite hearing, as I recall, from the
2 mayor of Kapuskasing on behalf of his community that no
3 legitimate access to any part of the forest should be
4 unduly withheld, and I point that out. At the same
5 hearing, the Hearst satellite hearing, you heard
6 evidence about how roads in that area are used, and I
7 simply say to you that there was no groundswell of
8 public opposition, in our submission, to the use of
9 access roads for timber management having regard to the
10 reality that was recognized, that you must have the
11 roads in order to harvest.

12 That's not to say, that's not say to say
13 that there weren't concerns expressed and potential
14 effects identified by access, there were, and they were
15 specifically addressed by MNR access witnesses and
16 mitigation and minimization measures were outlined by
17 them to deal with those specific effects. I mentioned
18 Mr. David Hogg's evidence.

19 I ask you to consider as well the
20 evidence of Mr. Neville Ward, a fisheries biologist who
21 testified for the MNR. He spoke specifically about the
22 effects of access on the aquatic environment and on
23 fish. And again I suggest to you that when you review
24 his evidence, he confirmed that any negative effects
25 from access on the aquatic environment, including on

1 water quality, can be mitigated and minimized by good
2 planning, good engineering and good construction
3 practices.

4 It's the position of the OFIA, Madam
5 Chair, Mr. Martel, that the provision of access, as
6 obvious as it might sound, should be recognized as a
7 fundamental step in timber management activities and
8 that any negative effects from timber management access
9 activities including construction, use, closure can be
10 mitigated, minimized with sound road location and
11 construction use practices and by the use of
12 appropriate implementation manuals and guidelines, and
13 that in the end what you come to on the access issue
14 is: What are the proposed mitigation/minimization
15 measures, are they satisfactory, do the guidelines
16 adequately address these issues, and will these effects
17 be adequately minimized. And, in our submission, they
18 do and they will be.

19 Mr. Cassidy in his submissions will deal
20 with some of the planning aspects of this including
21 road abandonment issues and the OFAH's proposal for
22 access road planning over a full rotation time frame
23 with the associated data collection aspects of that.

24 But in terms of the activity itself and
25 the impacts on the natural environment to be caused by

1 the impacts, it's our submission that you have reliable
2 and sufficient evidence before you to allow you to
3 conclude that proper mitigation and minimization
4 measures are in place and will continue to be put in
5 place to accommodate timber management access measures.

6 I propose to address next, Madam Chair,
7 Mr. Martel, the position of the parties on renewal, and
8 I'll return to make a few submissions about full-tree
9 harvesting after I have completed those renewal
10 submissions.

11 And I say to you that perhaps that there
12 are two seminal points to this case, the case that you
13 have to decide, and the first relates to the planning
14 proposals that have been made by the various parties in
15 their terms and conditions, and the second, as related
16 to timber management activities, concerns the proposals
17 of the parties relating to renewal.

18 And I say that to you because of the
19 divergence of perspective and position among the
20 parties on renewal issues and because of the singular
21 importance of clear renewal method approval that's
22 necessary to achieve the purpose of the undertaking.
23 So, one, you have an area where there's considerable
24 conflict on the evidence, and in the position of the
25 parties, it would be more accurate to say considerable

1 conflict in the position of the parties; and, secondly,
2 that that conflict in position arises in respect of an
3 issue that's fundamentally important to achievement of
4 the purpose of the undertaking.

5 The need for renewal as an activity per
6 se is not in dispute among any of the parties at the
7 hearing and never has been, I suggest. The issue at
8 the beginning of the hearing, and still now at its end,
9 is what renewal methods should be approved by this
10 Board and what techniques should be employed to achieve
11 it. I wish to address initially the involvement of the
12 Industry in renewal and, again, suggest to you why that
13 should be regarded by you at the end of the day as
14 being important.

15 The evidence is clear, I suggest, that
16 the Industry has a direct and a prominent role in
17 carrying out renewal activities in the area of the
18 undertaking and that flowed, as the Board is of course
19 aware, and was enlarged in a significant way by the
20 introduction in the early 1990s of the FMA program
21 which accomplished the integration of the harvest and
22 renewal functions and responsibilities.

23 The introduction of that program and the
24 enlarging of the Industry's role, direct role in
25 renewal, we suggest, has resulted in a significant

1 increase in the level of renewal achievement
2 accomplished in the area of the undertaking when
3 compared with that which was achieved prior to
4 introduction of the FMA program.

5 The facts before you, and I emphasize,
6 the facts before you are, first, that since the 1980
7 introduction of the FMA program there has been a
8 significant increase in the level of renewal activity
9 in the area of the undertaking, both with respect to
10 site preparation and with respect to regeneration. I
11 refer you to the data set out at pages 151 to 153 of
12 our written submissions.

13 These data indicate that by 1990 the
14 level of site preparation on FMA lands alone, FMA lands
15 alone had risen to over 120,000 hectares, and that by
16 1988 over 125,000 hectares on FMA lands had been
17 regenerated. And, again, I don't suggest to you that
18 there's magic in the numbers per se but the significant
19 feature of it is this, that that level of activity when
20 compared to the level of activity undertaken prior to
21 the program is significantly higher.

22 You've received evidence as well that
23 Industry personnel have been employed in timber
24 management activities, including renewal activities, in
25 many areas within the area of the undertaking at the

1 very same location for over 20 or 25 years. There was
2 evidence directly offered to you which demonstrated
3 that Industry personnel involved in renewal have, by
4 virtue of their length of involvement at various
5 locations in the area of the undertaking, their length
6 of involvement with the renewal, considerable
7 experience in renewal activities and, importantly,
8 considerable familiarity with the land base on which
9 they operate.

10 I'd refer you to the evidence of Mr.
11 Gordon Oldford before the Board with respect to the
12 implications, the partnership created between the MNR
13 and the Industry through the mechanism of the FMA
14 program for renewal activities. It was his evidence
15 that with the advent of the FMA program:

16 "...we improved our timber management
17 tremendously in the province through the
18 Industry's involvement in timber
19 management planning and in renewal and to
20 get the Industry to take on those
21 responsibilities, I viewed it at the time
22 to be a major breakthrough."

23 It's respectfully submitted that all of
24 the information before you, Madam Chair, Mr. Martel,
25 confirms that the intent of the FMA program was to

1 assist in the successful renewal of the forest by
2 integrating renewal and harvesting functions and
3 responsibilities and that the evidence demonstrates
4 that intent has been achieved and the effect has been a
5 significantly increased level of renewal activity,
6 again, both with respect to site preparation and
7 regeneration efforts throughout the area of the
8 undertaking.

9 There is a major area of difference
10 between Forests for Tomorrow on the one hand and the
11 Industry and the MNR on the other concerning the
12 efficacy and utility of artificial regeneration
13 measures, and you will see when you read FFT's written
14 submissions to you that a considerable part of their
15 argument on renewal concerns what they call the alleged
16 superiority of artificial regeneration.

17 In sum, we suggest, FFT in its written
18 submissions to the Board has challenged the efficacy of
19 artificial regeneration methods, the future need for
20 artificial regeneration in the area of the undertaking,
21 and the evidence of the Industry and MNR renewal
22 experts concerning the advantages and successes
23 achieved with artificial regeneration. And I say to
24 you, Madam Chair and Mr. Martel, that this is a
25 fundamental issue relating to renewal strategies for

1 the future that must be addressed by the Board and it
2 is of crucial importance to the Industry how the Board
3 deals with this issue.

4 Forests for Tomorrow in their terms and
5 conditions, the March, 1992 version of them, and in the
6 new version which was delivered with their final
7 argument emphasize natural regeneration as the Board
8 knows and, in effect, we suggest would require it in
9 the future to be the predominant and preferred, if not
10 the required, regeneration method in the area of the
11 undertaking. They do this primarily on the basis of
12 suggested lower cost associated with natural
13 regeneration.

14 I wish to make it clear in our
15 submissions to you, Madam Chair, Mr. Martel, what the
16 position of the Industry is on this issue. First, the
17 Industry has never said and does not now say that
18 natural regeneration does not work or is not needed.
19 What the Industry renewal experts have said throughout
20 this hearing from the beginning is, first, both
21 artificial and natural regeneration methods are
22 effective and are necessary in appropriate
23 circumstances. Further, in some instances it is
24 possible to combine artificial and natural regeneration
25 methods to achieve regeneration of desired species in a

1 desired way.

2 And perhaps the best example of that,
3 Madam Chair, Mr. Martel, that I can provide to you is
4 to ask you to look at the photographs that we've put
5 back up again this morning. These photographs comprise
6 Exhibit 1152, and you may recall that they were
7 described in evidence as the Robinson and Flowers
8 photographs.

9 Mr. Murray Ferguson an OFIA witness
10 introduced these photographs to you and explained in
11 his evidence what they depicted, and you remember that
12 the Robinson Flowers report was marked as an exhibit
13 before you, it dealt with clearcutting and a number of
14 sites were described in that report or identified by
15 photographs that accompanied the report.

16 It's Mr. Ferguson's evidence with respect
17 to these photographs - and they were marked, starting
18 in the top lefthand corner Exhibit 1152A, then
19 immediately below it B, and to the right with the
20 individual standing in the picture was C - it was his
21 evidence that these photographs pertained to the Dog
22 River/Matawin area and that that area had been
23 harvested between 1965 and 1968 using conventional cut
24 and skid harvesting techniques and that it was renewed
25 through scarification for natural, plus in part of the

1 area depicted in the photographs, direct seeding
2 treatments. So it was a combination of artificial and
3 natural regeneration methods.

4 The approximate size of that clearcut
5 area, Madam Chair, depicted in the first photograph is
6 968 hectares according to Mr. Ferguson. You will see
7 from looking at Exhibit 1152B that that area came back
8 to a fully regenerated area after harvesting, and you
9 will see by looking at photograph C the height of the
10 actual trees in that area.

11 Mr. Ferguson provided you with the
12 stocking assessment results for that area and it was
13 his evidence, because the area was harvested in the
14 years 1965 to 1968 there were three cut times. The
15 area that was cut in 1965 to 1966 has regenerated to
16 greater than 60 per cent jack pine, the area that was
17 cut in 1966 to 1967 has also regenerated to greater
18 than 60 per cent jack pine stocking, and the area
19 harvested in 1967 to 1968 has regenerated successfully
20 to jack pine at the level of 40 to 60 per cent jack
21 pine stocking.

22 He pointed out that there were at the
23 time of harvesting and are still now hardwood
24 components of this area, but that those stocking
25 results demonstrate a regeneration of commercially

1 viable species of jack pine to levels well in excess of
2 the minimum stocking standards contemplated under most
3 FMA agreements today.

4 What the third photograph shows, Madam
5 Chair, Mr. Martel - and Mr. Ferguson described this in
6 his evidence to you - is a gentleman by the name of Mr.
7 Moore who is over 6 feet, or approximately 6 feet tall,
8 and it shows the height of those trees accomplished by
9 natural regeneration and in combination with the
10 artificial regeneration techniques, that is, direct
11 seeding.

12 It was Mr. Ferguson's evidence - and the
13 entire description of these photographs, Madam Chair,
14 is found at Volume 199 really commencing at pages 35201
15 and following - and it was Mr. Ferguson's evidence that
16 these photographs were taken on the same day in June of
17 1989 by the manager of forestry operations for Mr.
18 Ferguson's company, Mr. Moore, and that Mr. Moore had
19 recognized the location of the photo in the Robinson
20 and Flowers report and went out to take photographs of
21 what the area actually looked like in June of 1989.

22 It was Mr. Ferguson's evidence that the
23 entire area in his view was well generated to jack pine
24 primarily, although there was a component of hardwood
25 present as I indicated. He also pointed out that most

1 of the roads that you can see in the upper photograph
2 were no longer visible in 1989 -- I'm sorry, I should
3 have said, the photograph at the top is a blowup of the
4 photograph that appears in the Flowers and Robinson
5 report, the 1989 photograph are B and C, and Mr.
6 Ferguson pointed out that the roads that you see in the
7 first photograph, photograph A, are no longer visible
8 in 1989 with the exception of the main road crossing
9 through the photo and the one road heading off to the
10 right.

11 And with respect to photograph C, Mr.
12 Ferguson indicated: Mr. Moore is approximately just
13 something less than 6 feet tall and from the photos you
14 can't really tell how tall the trees are because they
15 do extend beyond the top of the picture but I would say
16 they were at least in the range of 10 metres at this
17 time. And I asked what species are they, and he said
18 jack pine.

19 I suggest to you, Madam Chair, Mr.
20 Martel, that these photographs illustrate a number of
21 things, but for the purposes of my present submissions,
22 what they illustrate is that combined artificial and
23 natural regeneration techniques can result in desirable
24 levels of regeneration to conifer, to jack pine, and
25 that what that means is that the potential for the

1 future use of combined artificial and natural
2 regeneration methods should and must be preserved.

3 I said the photographs illustrate a
4 number of other things. They illustrate with respect
5 to access roads, as Mr. Ferguson pointed out, that with
6 the passage of time and as regeneration sets in that
7 crossing of roads on the area in fact disappears, apart
8 from the main access road. That's what happened in
9 this case, and that's a visual presentation of that
10 reality.

11 I suggest to you that there's other
12 evidence before you of the need for the continued
13 availability of unhampered resource to artificial
14 regeneration methods in appropriate cases and that that
15 evidence is available to you in the case studies
16 introduced by Industry witnesses.

17 You may remember that Exhibit 1100 is a
18 bound -- is a book containing four case studies
19 prepared by Industry witnesses and that you heard,
20 first, from a panel of Industry witnesses who described
21 how those case studies had been conducted, what the
22 nature of the case study areas were, and generally the
23 type of timber management activities described in the
24 case studies. Then as each panel testified, whether it
25 was on access, harvest, renewal or maintenance, those

1 individuals described to you what had been done on
2 those issues in the case study areas.

3 But on this point, and that is, the need
4 for and efficacy for combined artificial natural
5 regeneration techniques, you will find in particular
6 case study D in Exhibit 1100, that's the case study
7 that deals with black spruce clay belt management, Mr.
8 Rod Gemmell of Abitibi-Price in Iroquois Falls gave
9 evidence concerning the renewal activities in that case
10 study area and it was his evidence before you that
11 there were three blocks harvested in that case study.

12 Block A was site prepared and planted and
13 achieved a fifth-year stocking result of 65 per cent
14 black spruce; Block B was treated naturally by the seed
15 tree method; Block C was also naturally treated and the
16 fifth-year stocking results for Blocks B and C were 53
17 per cent.

18 Now, I'll come to this point in a
19 different context later, but Forests for Tomorrow in
20 its written argument before you has suggested that it
21 is inappropriate and inferentially unreliable or not
22 valuable to compare sites that have been artificially
23 regenerated when they have been tended to the
24 regeneration results achieved on naturally regenerated
25 sites if they have not been tended. And I point out to

1 you that in this case study, case study D, there's a
2 direct comparison of regeneration results possible
3 because all of these sites were tended.

4 The fifth-year stocking assessment
5 results show in one harvesting area what can happen by
6 the use of combined artificial and natural regeneration
7 techniques and the stocking results for black spruce
8 were clearly higher on the area site prepared and
9 planted.

10 But the point that I wish to leave with
11 the Board about this is that this case study
12 illustrates the need for the availability of combined
13 techniques, again in appropriate cases and depending on
14 site circumstances, and it also illustrates that there
15 is evidence before you that allows direct comparisons
16 to be made of areas that were tended that were
17 naturally regenerated or artificially regenerated.

18 Thus, the primary position of the
19 Industry is, as I've said, that both methods are
20 effective and are necessary and should continue to be
21 available.

22 It's the second position of the Industry
23 that to achieve the purpose of the undertaking
24 artificial regeneration programs are essential because
25 natural regeneration alone simply will not provide with

1 certainty the future wood supply needed to sustain the
2 area of the undertaking and provincial demand.

3 In many situations you heard from
4 Industry renewal experts that artificial regeneration
5 offers advantages over natural methods. It was their
6 evidence that this is so in part because artificial
7 regeneration has the potential to more consistently
8 produce a more evenly spaced and higher yielding forest
9 and permits a greater degree of control over species
10 composition of new stands.

11 With those positions, Forests for
12 Tomorrow takes great issue, and I want to take you,
13 Madam Chair and Mr. Martel, specifically to what
14 Forests for Tomorrow has said in its written
15 submissions on these issues and then to what I suggest
16 the evidence actually indicates.

17 That's going to take me some time to do.
18 It depends entirely on the Board's preference. I am
19 prepared to start now.

20 MADAM CHAIR: We're prepared to adjourn
21 for lunch, Ms. Cronk. We'll be back at 1:30.

22 MS. CRONK: Thank you.

23 ---Luncheon recess at 11:55 a.m.

24 ---On resuming at 1:30 p.m.

25 MADAM CHAIR: Good afternoon, Ms. Cronk.

1 Are you ready to continue?

2 MS. CRONK: Yes. Thank you, Madam Chair.

3 Madam Chair, Mr. Martel, you will recall
4 that this morning in providing you with a series of
5 examples from the terms and conditions of other
6 parties, which we suggest are beyond the scope of the
7 purpose of the undertaking in this case, I referred you
8 to a term and condition of the OFAH/NOTOA coalition
9 dealing with -- the suggestion being that there should
10 be a mandatory stipulated level of recycling.

11 I am informed that in the new terms and
12 conditions delivered to us on Monday by the OFAH/NOTOA
13 coalition that that provision is not there. I
14 apologize for that. I haven't read them yet, I should
15 tell you that, because we didn't get them until this
16 week, but in any event the illustration is still apt in
17 my submission that it reflects the type of condition
18 which contemplates purely non-timber objectives and,
19 therefore, it and others like it should not be accepted
20 by the Board.

21 Before we broke at lunch, Madam Chair,
22 Mr. Martel, I had indicated to you the second
23 fundamental position of the Industry with respect to
24 renewal and you will recall that I indicated that that
25 position essentially is that natural regeneration alone

1 will not provide the future wood supply needed to
2 sustain the Industry and provincial and area of the
3 undertaking demand.

4 In many situations, I indicated,
5 artificial regeneration according to Industry and MNR
6 renewal experts offers advantages over natural methods
7 and that this is so for a number of reasons, including
8 the fact that artificial regeneration carries with it
9 the potential to more consistently produce a more
10 evenly spaced and higher yield in forest and permits a
11 greater degree of control over species composition of
12 new stands.

13 I also indicated that upon review of
14 FFT's written legal submission you will find that they
15 take great issue with those suggestions and I indicated
16 that I wanted to take you in my submissions this
17 afternoon to certain of the submissions made by FFT in
18 this regard and then to what I would submit is the
19 actual evidence before you on some of these issues.

20 In Volume 2 of Forests for Tomorrow's
21 written submissions you will find a discussion of what
22 we understand to be their submissions regarding
23 renewal.

24 I am going to refer you first, unless you
25 wish to I don't think there is any need to actually go

1 to the submission, but in paragraphs 479 and 482 of
2 their submission FFT is critical of the MNR for
3 allegedly leading no evidence before you regarding the
4 success or lack of success of regeneration on FMAs.

5 It is difficult, we suggest, Madam Chair,
6 Mr. Martel, to make the statements made in those
7 paragraphs as sweepingly as we suggest they are having
8 regard to the fact that the three five-year FMA reviews
9 are all before you in evidence as Exhibits 312, 68 and
10 69.

11 In addition, you may remember that the
12 Industry introduced, and this was introduced by the
13 Industry in cross-examination, the FMA Task Force
14 Report was received by you as Exhibit 940, but the
15 substantive point in our submission is this, that
16 whatever the MNR did or didn't do by way of adducing
17 evidence before you one fact we suggest is indisputable
18 and that is that the Industry renewal experts did
19 introduce before you specific evidence and detailed
20 evidence concerning regeneration success on FMA areas.

21 I suggest to you that the source of the
22 evidence is not relevant in that context. The fact of
23 the evidence is.

24 You may remember that the Industry
25 renewal experts introduced the fifth year stocking

1 results on the 16 FMAs and entered into prior to 1984
2 where those results were available. Those results were
3 presented on the Industry renewal panel, which was
4 Panel No. 8, and the results are tabulated at page 124
5 of that statement of evidence. The statement of the
6 evidence is Exhibit 1137, madam Chair, Mr. Martel.

7 The results at page 124 of that statement
8 of evidence are reproduced in our written submissions
9 at page 214 and I am going to ask the Board to go to
10 that page and to look at that table for the purpose of
11 my submission. That's found under Tab 4.3, page 214.

12 You will see, Madam Chair, Mr. Martel,
13 that this table summarizes the fifth year stocking
14 assessment results to the end of 1988 for all 16 FMAs
15 signed prior to January 1st, 1984.

16 It shows, in our submission quite
17 clearly, first, that the overall success rate defined
18 as the proportion of treated area meeting or exceeding
19 minimum stocking standards established in the FMA
20 groundrules and weighted on the basis of the area
21 treated for all renewal methods and for all proposed
22 working groups combined averaged 80 per cent.

23 You find that in the very bottom of the
24 chart. On the left-hand side where it describes
25 renewal method it says 'all' and you will see for all

1 softwoods an 80 per cent area stocked to minimum
2 result. It is in the far right-hand side.

3 For all mixedwoods, an 80 per cent area
4 stocked to minimum result; for all hardwoods, 82 per
5 cent area stocked to minimum; and for all working
6 groups 80 per cent.

7 Secondly, in our submission, it clearly
8 establishes that artificial regeneration overall was
9 significantly more successful than natural
10 regeneration.

11 I suggest that to you because if you look
12 at the section of the chart dealing with those areas
13 treated by natural regeneration or renewal methods for
14 all working groups - that's right in the middle of
15 page - you will see that the percentage area stocked to
16 minimum was 71 per cent. That's the natural average.

17 The average for those areas artificially
18 renewed for all working groups was 96 per cent. This
19 was found to be particularly true for the softwood
20 working groups, the renewal of which was 96 per cent
21 successful by artificial means and only 63 per cent
22 successful by natural methods.

23 Now, this information, in our respectful
24 submission, is very important to you in light of the
25 submissions contained in FFT's written argument.

1 This is evidence, Madam Chair, Mr.
2 Martel, of the regeneration success experienced to the
3 extent that current information was available at the
4 time they gave evidence from the Industry foresters
5 responsible for renewal on FMA lands and it applies to
6 all FMAs, all 16 FMAs entered into before 1984; that is
7 to all of them on which fifth year stocking results
8 were available or sufficient time had passed to make
9 the results available.

10 This information, in our submission, also
11 shows quite clearly that the Industry does not have as
12 is expressly suggested in FFT's submission a blind
13 preference for artificial regeneration.

14 You will find in paragraph 185 at page 82
15 of Forests for Tomorrow's written submissions the
16 assertion that since the provincial government covers
17 many of the costs of an artificial regeneration program
18 that Industry will consistently choose artificial
19 methods over natural. That is what is stated in those
20 submissions.

21 The facts are, I suggest, given the
22 information in Table 3 at page 124 that at the end of
23 1988, if you compare the total number of hectares
24 treated by Industry with natural methods compared to
25 artificial, that if there is a preference for either

1 method it favours natural.

2 You will see that the extent of the area
3 treated by natural regeneration methods numbered 46,453
4 hectares. I am looking under the treated area column
5 beside all workings groups in the middle of the page
6 for natural, and I ask you to compare that to the
7 similar figure again in the middle column under treated
8 area for all working groups for artificial and you will
9 see that the number of hectares treated in that fashion
10 numbered 27,276 hectares.

11 This data indicates that 63 per cent of
12 all regeneration on these 16 FMA areas carried out by
13 Industry was completed using natural regeneration
14 techniques.

15 That's hardly consistent, we respectfully
16 suggest, with FFT's assertion that Industry will
17 consistently choose artificial over natural
18 regeneration methods.

19 You may recall in the evidence that the
20 MNR also indicated that it too relies on a mixture of
21 artificial and natural regeneration techniques, as does
22 the Industry.

23 Now, in the FFT written submission
24 specifically dealing with this table of information a
25 number of comments are made and one of those is that

1 this table "only sets out" fifth year stocking
2 assessment results.

3 Just dealing with perhaps the imputation
4 of that language. The table only sets out fifth year
5 stocking results because that's what was available from
6 the FMA areas given the time at which they were entered
7 into and the time at which the renewal experts gave
8 evidence.

9 Among the other comments made concerning
10 the evidence before the Board by FFT is the following.
11 At page 212, paragraph 503, it is suggested that this
12 comparative information set out in Table 3 isn't
13 valuable because the data on tending efforts wasn't
14 provided.

15 You may recall I alluded earlier this
16 morning to the fact that FFT appears to be suggesting
17 in its written submissions that it is not valuable and
18 not appropriate, not of assistance to the Board to
19 compare regeneration results on areas artificially
20 renewed where tending was carried out with those areas
21 of which natural regeneration is carried out
22 inferentially on which tending may not have been
23 carried out.

24 May I make the following points with
25 respect to this information. First, there is no

1 indication of what tending efforts were carried out on
2 any of these areas; the artificial or the natural.

3 It cannot be assumed that tending was
4 carried out on all the areas artificially renewed but
5 on none of those naturally renewed. I say that with
6 case study 4B clearly in mind; that is the Iroquois
7 Falls black spruce Clay Belt management, a case study
8 to which I referred earlier this morning. You will
9 remember that out of three blocks two were treated for
10 natural, one for artificial, all three were tended.

11 In any event and perhaps more
12 importantly, fifth year stocking assessments are not
13 conducted to evaluate tending success, but rather to
14 evaluate the overall success of the complete
15 silvicultural prescription.

16 The specific suggestion made by FFT that
17 it is inappropriate comparison, artificial to natural
18 in this context without tending information, is found
19 at paragraph 211, page 249.

20 I suggest to you, Madam Chair, Mr.
21 Martel, that there is no evidence before you to suggest
22 that as a uniform proposition naturally regenerated
23 areas do not receive tending while artificially
24 regenerated areas do.

25 I would suggest to you that that's very

1 site specific, that it varies from area to area and
2 that while in some instances that will be true,
3 naturally regenerated areas will not receive tending
4 treatments, in others it would be untrue.

5 At page 229, paragraph 565 of its
6 submissions FFT says:

7 "The millions of dollars spent in the
8 FMA program at best produced 17 per cent
9 more stocking in artificial regeneration
10 stands at the fifth year after planting."

11 The reference quoted for that, Madam
12 Chair, Mr. Martel, is again Table 3 at page 124 of the
13 renewal evidence.

14 It is my submission to you quite simply,
15 Madam Chair, Mr. Martel, that this is an instance where
16 that submission is in error. I suggest to you it is
17 just plain inaccurate.

18 The reason I say that is when you look at
19 Table 3, the 17 per cent is derived by comparing the
20 percentage of area stocked for all softwoods under
21 natural -- perhaps we could just find that first.

22 If you look at the natural section for
23 all softwoods and you look at the area stocked to
24 minimum it is 63 per cent, and if you go down under the
25 artificial group and look at the -- sorry, go down into

1 the all treatments category at the bottom under all
2 softwoods you will see that the percentage area stocked
3 to minimum is 80 per cent.

4 If you deduct one of those percentages
5 from the other, 63 per cent to 80, you come up with 17
6 per cent.

7 In fact, I would suggest that you are
8 comparing apples to oranges. That is an inappropriate
9 comparison. If you really want to see what the
10 percentage increase in regeneration success was on the
11 areas artificially treated compared to naturally you
12 have to compare it in the same category. In other
13 words, you have to look at all softwoods, these all
14 softwoods for natural and artificial, not for areas
15 that received combined treatments.

16 So the proper number of comparison, I
17 would suggest, is that you look at the percentage areas
18 stocked to minimum for all softwoods it is 63 per cent
19 for those areas naturally treated, and if you look at
20 the same data point for areas artificially renewed, all
21 softwoods, the percentage area stocked to minimu is 96
22 per cent. That's a 33 per cent comparative increase in
23 stocking for those areas artificially regenerated
24 versus those naturally regenerated.

25 I would suggest to you that this

1 statement is simply made by FFT in doing that
2 calculation in its written argument.

3 I ask you to look as well in comparing
4 the 63 per cent versus 96 per cent at the extent of the
5 area treated and you will see they are very similar.
6 So it is not as if there was a massively or materially
7 different amount of land treated by one method versus
8 the other. For those areas naturally treated it was
9 approximately 25,000 hectares and for those areas
10 artificially treated it was approximately 27,000
11 hectares, rounding up and rounding down.

12 It is, therefore, I suggest inaccurate to
13 say that the FMA program produced at best only a 17 per
14 cent increase in stocking on areas artificially
15 treated. In fact, when you compare apples to apples it
16 is 33 per cent.

17 FFT has also said in its written
18 submissions at page 213, paragraph 504, again still
19 dealing with the data in this chart and the evidence of
20 the Industry experts concerning it, that the figures
21 are only for five-year stocking results, I referred to
22 that earlier, and bear "little relationship to the
23 likely long-term status of these plantations."

24 Madam Chair, Mr. Martel, in my respectful
25 submission there is no evidence to support that

1 assertion. There is no evidence cited in FFT's written
2 argument in support of that proposition concerning
3 these FMA areas, the areas actually treated and
4 represented by this data.

5 Reference is made by FFT in making that
6 submission to George Marek's evidence regarding the
7 risks associated with planting monoculture plantations
8 and I would ask you to look in this context when you
9 come to consider this at the end of the day at the
10 submissions in paragraph 559 at page 226 of FFT's
11 submissions, and I would ask you to remember this about
12 the evidence that Mr. Marek gave about these
13 plantations.

14 You will recall first they were in the
15 Limestone Lake and Tyrol Lake areas in the Lake Nipigon
16 area and you will recall perhaps the exchange that
17 occurred with him about the extent of his experience in
18 the area of the undertaking and the acknowledgment that
19 his experience was primarily in the Lake Nipigon area,
20 but perhaps more importantly when it came to those
21 plantation areas themselves Mr. Marek's evidence before
22 you was that it was his intent in creating those
23 plantations to establish monocultures.

24 He very candidly acknowledged that's what
25 he went in to do and that is what governed the choice

1 by him of management treatments; he sought to create
2 monoculture plantations of a particular type and that
3 dictated, I suggest, what followed.

4 Because the evidence indicates that on
5 those plantations there were undertaken numerous
6 tending treatments heavily weighted to manual tending
7 treatments. There were very few chemical tending
8 treatments, although some, on the evidence that's
9 before you on those plantations, but they were repeat,
10 three, four, five, six, seven manual tending treatments
11 on some of those blocks.

12 I ask you to remember this as well, that
13 Mr. Marek's evidence before you was that he had
14 achieved and sought to achieve a stocking result on
15 those plantations of 80 per cent of black spruce and it
16 was his initial evidence before you that he routinely
17 achieved that, it was achievable and that's what he
18 thought should be achieved.

19 When you actually looked at the
20 silvicultural information systems records that
21 pertained to Mr. Marek's plantations, and you will
22 remember that some of those were introduced before you
23 and he was asked about them, was given the records to
24 look at, he acknowledged that they did not reflect
25 reported results of anything like 80 per cent black

1 spruce stocking on those plantations.

2 The point in this context is this, that
3 if you are measuring regeneration success on a
4 monoculture against a standard of 80 per cent stocking,
5 which is what Mr. Marek was doing on his plantations,
6 and when that's not achieved it is little wonder then
7 perhaps that one can say in those circumstances that
8 stocking results at the fifth year level may bear very
9 little relationship to what is ultimately achieved.

10 In other words, his success or failure in
11 those plantations in his own mind, and he is perfectly
12 entitled do that, I don't suggest otherwise, he judged
13 the success on those plantations by a standard of his
14 own making, that was 80 per cent for black spruce
15 stocking, measured in the context of an intended
16 creation of a monoculture.

17 I suggest to you that there is no
18 evidence before you that the artificially renewed areas
19 described in Table 3 on the FMA areas undertaken by the
20 Industry reflect areas where the intent was to create
21 deliberately monocultures with anything like the
22 stocking result of that kind.

23 I say that to you because if that was the
24 intent it dictates the management practices that will
25 be followed and I ask you to compare what you heard in

1 evidence from the Industry renewal tending experts
2 about the way they approach tending and the way they
3 assess tending options and what they actually do in the
4 field in carrying out tending against the approach that
5 Mr. Marek took that emerged in evidence.

6 Again, different managers have different
7 approaches. Mr. Marek was entitled to take the
8 approach he thought appropriate at that time, but I am
9 suggesting to you that one should not assume from the
10 failure of that approach, which is how he described it
11 because he said he was not happy with the regeneration
12 results on his plantations, that the skills and
13 practices of other managers accord with Mr. Marek's
14 approach.

15 Forests for Tomorrow has also said in its
16 written submissions at page 226, paragraph 556:

17 "No quantitative evidence in
18 support of superior natural regeneration
19 results is provided."

20 That's paragraph 556.

21 First, Madam Chair, it is possible and no
22 doubt we will hear whether they meant to say natural or
23 artificial in context of that paragraph.

24 Industry has never said that the results
25 from natural regeneration are superior to the results

1 of artificial regeneration, although, again, that's a
2 very site specific thing.

3 The evidence that the Industry renewal
4 experts gave you was that superior regeneration results
5 can be achieved with artificial regeneration methods,
6 not natural. That was the proposition put forward to
7 you by Industry renewal experts and defended by them in
8 their evidence.

9 MS. SWENARCHUK: Ms. Cronk, may I just
10 clear that up right now that you are quite right, that
11 that is an error in the text.

12 MS. CRONK: I am grateful. Thank you.

13 MS. SWENARCHUK: Thank you.

14 MS. CRONK: I assumed that.

15 So that the point, Madam Chair, Mr.
16 Martel, is that what the Industry witnesses have said
17 and what they demonstrated by the results in areas for
18 which they are responsible is that you can achieve
19 superior results through artificial regeneration.

20 I suggest to you that contrary to what is
21 stated in that submission by Forests for Tomorrow as
22 amended, to insert the right word, is inaccurate
23 because it is suggested that there is no quantitative
24 evidence before this Board in support of the
25 observation that artificial regeneration can result in

1 superior regeneration results. I suggest to you that
2 it is here and it is exactly at page 124. That's one
3 place where it is. That is in part with those data
4 indicate.

5 I ask you to consider as well the
6 regeneration results reported upon in the case studies
7 set out in Exhibit 1100. You will see in those case
8 studies that in areas treated by artificial methods
9 often on the same blocks, and certainly within the same
10 case study area, that superior results by artificial
11 regeneration methods are documented in those case
12 studies.

13 It was precisely to put before the Board
14 evidence of regeneration, success or failure, in the
15 area of the undertaking on areas managed for renewal by
16 Industry that that evidence was prepared and put before
17 you. It was specifically so that you would have an
18 evidentiary base on which to satisfy yourselves one way
19 or another as to whether the experience that Industry
20 outlined to you is supported by field experience, and I
21 suggest to you that it is through that evidence.

22 There is another important feature in our
23 submission about the data that the Industry renewal
24 experts gave you and about the data in particular set
25 out in Table 3 at page 124 and that is that it must be

1 remembered in looking at these results that the sites
2 on which artificial regeneration was carried out were
3 selected and identified for artificial regeneration for
4 a reason; in other words, those prescriptions weren't
5 applied at random or by accident.

6 You have heard in evidence, and I will
7 come back to this in another context, that there are
8 some sites that are highly productive in the area of
9 the undertaking where competition is or predictably
10 will be very severe and that on those types of sites
11 often, but not always, artificial regeneration is the
12 renewal treatment of choice.

13 So that in looking at the information
14 that you have in Table 3 about areas treated by
15 artificial methods it is important to remember, I
16 suggest, why artificial regeneration is undertaken by
17 Industry renewal experts and the circumstance that they
18 described to you as being those in which they will do
19 it at all.

20 What I am suggesting to you comes from
21 that is that the site conditions applicable to the
22 areas reported upon in this chart as having been
23 treated by artificial methods required artificial
24 regeneration. Certainly there is no evidence before
25 you to the contrary.

1 It is for that reason that that
2 prescription, that type of renewal treatment was
3 adopted on those sites and I would suggest to you that
4 if those sites had been treated by natural methods the
5 results would have been very, very different than you
6 see in this table and it is precisely because
7 artificial is undertaken to meet a certain range of
8 site condition and circumstance and to put it perhaps
9 in a layperson's terms, the needier the site in terms
10 of competition and productivity, it invites an
11 assessment of whether artificial regeneration is the
12 appropriate method.

13 What I am saying to you is that the
14 stocking results in that table for those areas would
15 have been significantly lower if natural regeneration
16 had been attempted on some of those sites instead
17 instead of artificial regeneration.

18 What else has Forests for Tomorrow said
19 in this hearing about artificial versus natural
20 regeneration?

21 FFT in its written submissions points to
22 Exhibit 552 and 553, the latter being the SOARS 2
23 Report. You may remember that that was introduced in
24 evidence and suggests that the stocking and free to
25 grow results contained in those two exhibits indicate

1 higher success rates for areas treated by natural
2 renewal methods than for those treated for artificial
3 regeneration methods and really that theme and that
4 assertion is dealt with in a number of pages in FFT's
5 submissions.

6 When you look at those exhibits, and I am
7 speaking now, Madam Chair, Mr. Martel, to Exhibit 552
8 and 553. Let me just clarify what they are. 552 is
9 the text version of some overheads put in by MNR
10 renewal witness concerning regeneration result on Crown
11 management units. It was discussed in evidence by Mr.
12 Ron Waito during the MNR renewal panel. That's 552.

13 553 is the SOARS 2 report. Both of those
14 exhibits and the SOARS 1 Report are discussed by FFT in
15 their written submission in support of their thesis
16 that what should be ordered in this hearing is a
17 greater dependence, a required dependence on natural
18 regeneration versus artificial.

19 When you look at those exhibits, in my
20 submission, Madam Chair, Mr. Martel, what you will see
21 is this. In the case of Exhibit 552, first, as I
22 indicated, it applies only to Crown management units.
23 It applies to regeneration efforts undertaken other
24 than under the FMA program. It reflects results,
25 according to Mr. Waito, on areas where very little, if

1 any, tending was undertaken.

2 More importantly, Madam Chair, it was Mr.
3 Waito's evidence that the data in that exhibit, 552,
4 that the largest proportion of the area that was
5 sampled and contributed to the percentage results set
6 out in that exhibit was the area that was regenerated
7 in the Hearst District. 77 per cent he said of the
8 area results described in that exhibit apply to the
9 Hearst District.

10 He said that if one were to look strictly
11 at conifer working groups on all types of sites, not
12 just those in the Hearst District, the natural
13 regeneration figures reported in that exhibit would be
14 very different.

15 What I am suggesting to you, Madam Chair,
16 and what I suggested and others did as well, but
17 certainly we did in our cross-examination of Mr. Waito,
18 was that those results were narrow. You had to
19 understand what they were, that they applied only to
20 CMUs and even then really only to or the majority of
21 only one district, the Hearst District, and Mr. Waito
22 indicated and confirmed that that was the case.

23 From the perspective of our clients, I
24 point out as well that they have nothing to do with and
25 do not speak to the issue of renewal results, good or

1 bad, on areas over which the Industry is responsible.
2 That is under the FMA program.

3 With respect to Exhibit 553, the SOARS 2
4 Report, again, there are some very important features
5 of that report which I suggest should be taken into
6 account when considering it.

7 First, it deals with planting carried out
8 in 1976 and earlier; secondly, it deals with seeding
9 undertaken in 1971 and earlier; thirdly, again, it does
10 not apply to efforts or results specific to the FMA
11 program and areas on which Industry has undertaken
12 renewal effort.

13 The most important point, Madam Chair,
14 Mr. Martel, I suggest is this, that in the conclusion
15 to the SOARS Report, this is Exhibit 553 at page 26,
16 the author says as follows:

17 "It must be kept in mind that these
18 results are for artificially regenerated
19 areas of planting and seeding undertaken
20 prior to 1977 and 1972 respectively.

21 They, therefore, represent stages and
22 states of expertise, experience and
23 knowledge pertaining to that period.

24 Success in artificial regeneration and
25 establishment is a function of adequate

1 site preparation, condition and health of
2 planting stock at the time of planting
3 and subsequent tending when necessary to
4 control competing vegetation.

5 Considerable advances have been made,
6 particularly since the mid 1970s, in
7 availability of appropriate site
8 preparation equipment for different
9 forest conditions. The use of container
10 stock improved storage and transport
11 facilities for stock prior to planting
12 and increased tending of young stands."

13 In other words, Madam Chair, Mr. Martel,
14 I respectfully suggest that what the authors were
15 indicating is that the results in this report reflect
16 the results of techniques applied based on the
17 state-of-the-art and understanding of practices in the
18 early 1970s and they have to be viewed in that context.

19 It follows from that, I suggest, as we
20 sit here in 1992 that that report should not be relied
21 upon or viewed as representing the likely renewal
22 results to be achieved when the renewal methods and
23 techniques which have been described to you in evidence
24 are undertaken.

25 I should point out that the authors of

1 the SOARS 1 Report, which is also referred to by FFT in
2 its submission, that's Exhibit 135, make virtually the
3 identical comments at page 236.

4 The fourth major proposition made by FFT,
5 as we understand their written argument before you
6 concerning renewal, is set out in paragraph 499 at page
7 211 where FFT indicates:

8 "The need for tending an artificially
9 regenerated site applies equally to the
10 naturally regenerating sites harvested by
11 conventional large area clearcutting."

12 Again, that's at paragraph 499, page 211.

13 With respect, Madam Chair, I suggest that
14 that assertion is overstated and does not reflect,
15 stated in the way that it is, the evidence that you
16 have heard.

17 I say that in reliance on this evidence.
18 First, you have heard repeatedly that artificial
19 regeneration, as I mentioned a few comments ago, is
20 undertaken on productive sites where competition is
21 severe or where it is known that it will be severe and
22 that natural regeneration is usually best suited to
23 sites which are less productive and not prone to as
24 much as competition.

25 That's the going-in threshold issue.

1 That's why natural regeneration is undertaken on such
2 sites. FFT has recognized this in the evidence that
3 you have heard in paragraphs 489 and 492 of its
4 submissions. They talk about that. Productivity in
5 this context, I suggest, means competition. The
6 likelihood and extent of anticipated competition.

7 Tending is undertaken to suppress
8 competition. It follows, I suggest, that where there
9 is less competition there is a correspondingly lower
10 need for tending. Therefore, on many areas, I don't
11 say in all, but on many areas which are naturally
12 regenerated tending is not required.

13 This is also the case, I suggest,
14 contrary to the submissions made by Forests for
15 Tomorrow in the paragraph I just read to you. It is
16 also the case where large area clearcutting in the past
17 was carried out, and I point in making that assertion
18 to the exhibits we have already looked at this morning,
19 the Flowers, Robinson photographs.

20 You have heard that that was in its day a
21 clearcut of over 968 hectares. There was no tending
22 conducted on that area, there was a combination of
23 natural and artificial regeneration techniques carried
24 out and you have heard what the stocking results were
25 as described by Mr. Ferguson.

1 As Mr. Freidin also pointed out on a
2 related issue, the degree of competition doesn't change
3 according to the size of the clearcut or the size of
4 the harvest.

5 What that really means is that extent of
6 the competition is the same per hectare within any
7 given hectare, whether the size of the clearcut is 10
8 hectares or a thousand. If it is a competition-proned
9 site the areas susceptible to such competition share
10 that equally in each hectare. In other words, by going
11 to smaller cuts you do not reduce in a silvicultural
12 sense the degree and extent of competition.

13 The fifth statement or submission which I
14 wish to deal with contained in the FFT's submissions is
15 found at page 226, paragraph 557 and in this part of
16 their argument, Madam Chair, Mr. Martel, it is
17 suggested, and I quote:

18 "No evidence has been presented to the
19 Board by the MNR or the Industry to
20 indicate that areas are regenerating to
21 more than the minimum requirement. In
22 fact, it would appear that the objective
23 exists on paper only."

24 The minimum requirement in that context
25 and in the context of the discussion contained in the

1 FFT argument refers to the minimum 40 per cent stocking
2 requirement under FMAs.

3 In my respectful submission to you, Madam
4 Chair, Mr. Martel, that just is not the case. I say
5 with the greatest of respect that is inaccurate and it
6 does not reflect the evidence before this Board.

7 The Industry case studies, for example,
8 Exhibit 1100, as I indicated, were introduced for the
9 specific purposes of showing you what's actually
10 happening in the field and that people -- if you recall
11 who testified with respect to the renewal aspects of
12 those case studies, you heard from Mr. Wadell, Mr.
13 Brian Nicks with respect to the E.B. Eddy case study
14 area, you heard from Mr. Murray Ferguson, you heard
15 from Mr. Rod Gemmel, you heard from Mr. Peter Murray
16 and you heard from someone who is going to kill me at
17 5:30 if I don't remember the name, but there is a sixth
18 witness and the name now escapes me.

19 The renewal witnesses you heard from in
20 that panel were professional foresters who actually
21 carried out and were responsible for the renewal
22 activities described in those case studies. These are
23 the people who did it.

24 Mr. Max Squires is the sixth witness.

25 What the case studies indicate on this

1 issue is what happened with the renewal efforts
2 undertaken in the case studies.

3 I am going to suggest to you, Madam
4 Chair, Mr. Martel, that it just isn't accurate and
5 indeed I accept that these things can happen
6 unintentionally, but I suggest it is unfair to the
7 renewal witnesses that you have heard from to be
8 suggesting that there is no evidence before this Board
9 indicating that their efforts to achieve more than the
10 minimum stocking results are nothing more than a paper
11 exercise and that that objective exists on paper only.

12 You heard from six professional foresters
13 who told you exactly the reverse. You heard from them
14 what they tried to do, you heard at great length from
15 the E.B. Eddy representatives, for example, about
16 experimental efforts that they undertaken in their case
17 study area for the precise and explicit purpose of
18 improving stocking results and you heard what those
19 actual results were.

20 On case study 4A, fifth year stocking
21 results showed it being stocked to 50 per cent for jack
22 pine and spruce. In case study 4B, 55 per cent
23 stocking results - these are all fifth year stocking
24 results, Madam Chair - 55 per cent on conventionally
25 treated blocks and as high as 81 per cent on the

1 experimentally treated blocks. That is the E.B. Eddy
2 case study.

3 Case study C, 63 per cent average
4 stocking results over 19 blocks. That was Mr. Max
5 Squires case study, the one that he described to you.
6 You will remember that those were NSR lands and he
7 showed you in photographs the kind of competition that
8 existed prior to treatment on that site and he showed
9 you that on average there was a 63 per cent stocking
10 result over 19 blocks achieved.

11 In case study 4D, 51 to 65 per cent
12 stocking achieved of conifer. Fifth year stocking
13 results.

14 I would suggest to you that there is
15 evidence before you of achievement and, more
16 particularly in the context of a statement made in the
17 FFT's submissions, a considerable effort to achieve
18 more than minimum stocking results on areas under the
19 FMA program by Industry renewal experts.

20 It is repeatedly referred to the FFT
21 submissions, as I think I indicated earlier today, or
22 at least this phrase is repeatedly used, 'the alleged
23 superiority of artificial regeneration techniques.'
24 You will find this language, for example in paragraphs
25 501 and 502 at page 212 and you will find it again at

1 page 223 as a heading to a discussion.

2 It is the Industry's submission, Madam
3 Chair, Mr. Martel, that it has been substantiated in
4 evidence before you that depending upon site
5 circumstances artificial regeneration can result in
6 superior renewal efforts in the area of the
7 undertaking.

8 The evidence before you is that in the
9 last 12 years in this province, since 1980, the
10 Industry has been directly involved in responsibility
11 for renewal activities under the FMA program.

12 I would suggest to you that the Industry
13 renewal experts made it clear that they were prepared
14 to be judged by their results and that the results are
15 set out at page 124 of the renewal witness statement
16 and are repeated in our submission at page 214, Table
17 3. That data clearly indicates, I suggest, that
18 artificial regeneration does and did achieve superior
19 results on the areas treated in that way by the FMA
20 holders since 1980.

21 I started these submissions some time ago
22 by indicating that I wanted to make it clear what the
23 Industry submissions on renewal and, more particularly,
24 on artificial and natural regeneration were and I have
25 given you two of them.

1 This is the third. It is the Industry's
2 position that in some situations natural regeneration
3 methods simply will not work. That is based on
4 silvicultural reality, I would suggest, and it is based
5 directly on the evidence that you he heard from renewal
6 experts that in some situations with some site
7 conditions natural regeneration is just not an option.

8 That is what I understood Mr. Freidin to
9 mean earlier in the week when he said that some
10 alternatives to the way of carrying out the undertaking
11 are not true alternatives in the sense that natural
12 regeneration cannot be relied upon alone to the
13 exclusion of artificial regeneration to achieve needed
14 renewal results.

15 You were provided with examples of where
16 this was the case and I suggest that you saw some of
17 them on the site visits that you took during the course
18 of the hearing. For example, you were told by MNR
19 reply witnesses on Panel 4 that in the black spruce
20 working group, for example, many sites which are
21 competition prone require the use of artificial
22 regeneration, specifically with that working group
23 that's the situation.

24 They also said with respect to mixedwood
25 management that the white spruce seed tree method is

1 not reliable in all circumstances.

2 When I come to consider the silvicultural
3 proposals that FFT has made in its terms and conditions
4 to you, I would suggest to you that the methods of
5 regeneration that they continue to urge that you accept
6 in mandatory terms for white pine, red pine and the
7 tolerant hardwoods cannot be relied upon as uniform and
8 exclusive prescriptions to achieve renewal success in
9 all circumstances.

10 I ask you to consider as well on this
11 issue the case study presented by Mr. Rod Gemmel and
12 his evidence of what conditions are like in the Clay
13 Belt.

14 You will remember that he described to
15 you upland and lowland sites in the Clay Belt and the
16 fact that the site conditions which exist in that area
17 are so vastly different between upland and lowland
18 sites that renewal techniques, renewal strategies must
19 be different and that while some will permit natural
20 regeneration with very acceptable results, some of
21 those sites will not and that on the highly productive
22 Clay Belt sites you just can't use natural regeneration
23 techniques if you expect to achieve successful conifer
24 renewal. He gave you detailed evidence about that and
25 illustrated it with his case study concerning the Clay

1 Belt.

2 It is also suggested in the FFT written
3 submissions to you in paragraph 558 at page 226 that
4 Industry -- it is suggested by FFT that the Industry
5 has estimated future yields in the past as high as 71
6 cords per acre.

7 An FFT witness referred to that in the
8 course of his evidence and did so on the basis of
9 evidence produced and presented to you by Max
10 McCormack, Dr. McCormack, during the course of the
11 Industry's tending panel.

12 The Industry has, in fact, never said,
13 Madam Chair, Mr. Martel, that their estimates or
14 objectives of future yields are as high as 71 cords per
15 acre. That value is derived from Dr. McCormack's
16 evidence where hypothetical scenarios were provided to
17 illustrate yield changes under varying silvicultural
18 treatment intensities.

19 He had a graph that showed what would
20 happen if you changed silvicultural intensity what the
21 impact was on yield and the 71 cords per acre yield
22 represented the results of an intensive clonal tree
23 improvement program. No OFIA witness said that they
24 could and do obtain that level of yields per acre.

25 In paragraph 560, page 227 of FFT's

1 submissions, FFT suggests that the increase in
2 regeneration activities in the 1980s reported by OFIA
3 witnesses was clearly dependent on the establishment of
4 government funding for it.

5 I pointed out earlier in my submission
6 their assertion that given the availability of funding
7 through the arrangements under the FMA program for
8 renewal it was alleged that Industry in each case would
9 prefer artificial regeneration and I explained to you
10 why in the evidence I believe that allegation to be
11 unsubstantiated.

12 This allegation, FFT takes it a step
13 further and says that if that was not case, if this
14 improved result in renewal activity was not directly
15 dependent on government funding, then, FFT has said,
16 that the Industry would have undertaken comparable
17 regeneration activities prior to 1980.

18 There is only one problem with that,
19 Madam Chair and Mr. Martel, that is that these are
20 Crown lands and that prior to 1980, prior to the
21 introduction of the FMA program, the MNR had
22 responsibility for renewal.

23 The Industry had no legal right or
24 authority of any kind absent agreement with the Crown
25 to be carrying out renewal activities on lands that

1 they harvested. There was an entirely different
2 management structure and philosophy in place that you
3 have heard from a number of witnesses specifically
4 divided harvest and renewal functions, responsibilities
5 and I suggest, therefore, rights.

6 I have spent some time, Madam Chair, Mr.
7 Martel, in reviewing some of the specific submissions
8 made by FFT and in setting before you in what I hope
9 will prove to be a helpful way for you what the
10 Industry's position on these issues is because this
11 issue of artificial natural regeneration and the terms
12 and conditions proposed by FFT concerning natural
13 regeneration are, again, I suggest, of fundamental
14 importance in this case because it is a choice, again,
15 you are going to have to make.

16 You have MNR and Industry renewal experts
17 saying to you, on the one hand, we must continue to
18 have available to us these two techniques in the
19 future, we need the ability to combine them where
20 appropriate, we need the ability to use them to the
21 exclusion of one another where appropriate and they say
22 to you artificial regeneration works and in some
23 situations can result in superior renewal achievement
24 and they have put evidence before you to demonstrate
25 that.

1 FFT's terms and conditions, and I will
2 come to the specifics of it, in our respectful
3 submission would essentially so constrain the
4 availability of the use of artificial regeneration as
5 to effectively mandate natural regeneration to the
6 exclusion of artificial regeneration in the area of the
7 undertaking.

8 We say to you with respect to that that
9 that will have a powerfully negative impact on the
10 ability to achieve the purpose of the undertaking given
11 the actual silvicultural evidence that you have heard
12 about the circumstances in which artificial
13 regeneration is required.

14 I remind you, in concluding my
15 submissions on this point, to consider the data that
16 the Industry has actually given which shows that of all
17 the areas that they have renewed under the FMA program
18 as at the end of 1988 for those fifth year stocking
19 results that were available 63 per cent was treated
20 naturally. This is not a trend line showing artificial
21 regeneration going off the map. This is a balanced
22 site-by-site assessment of which technique is in the
23 best interest of the resource.

24 In the end, of course, what I am saying
25 to you is that the positions of the parties, FFT on the

1 one side and the Industry on the other on this
2 particular issue, are diametrically different and a
3 decision is going to have to be made as to which
4 approach to adopt and which adopt to implement.

5 I ask you when you come to weigh all of
6 this evidence on renewal and the approach to renewal to
7 consider, as Mr. Freidin requested you to do, the
8 qualifications of the witnesses that you heard, the
9 experience that the witnesses had with renewal
10 activities in the area of the undertaking and their
11 demeanour as you saw it in the hearing room.

12 When lawyers speak -- at least when this
13 lawyer speaks of demeanour in that context, what I mean
14 by that is this, was the witness helpful, were the
15 witnesses responsive to the questions that were asked
16 of them, did they evade questions or obfuscate in their
17 answers, were they willing to acknowledge matters not
18 helpful to their case when the facts warranted it, were
19 they forthright and candid and, finally, that elusive
20 quality that is often referred to before our tribunals
21 and our courts: Did their evidence have the ring of
22 truth. In weighing all of that, on whose judgment, on
23 whose opinions and on whose experience are you most
24 comfortable in relying.

25 I am obliged, Madam Chair, Mr. Martel, to

1 ask you to recall this when you come to that
2 assessment, that from the Industry on these issues,
3 renewal, you heard from Mr. Wadell, Jim Wadell, a
4 professional forester in Ontario with 38 years
5 experience. His entire career has been spent as a
6 practising forester in the area of the undertaking and
7 in a variety of areas within the area of the
8 undertaking.

9 You have heard from Malcolm Squires, a
10 professional forester in Ontario. He has 29 years'
11 experience, the last 12 of which are within the area of
12 the undertaking. The others in renewal and other
13 timber management activities in Newfoundland.

14 Mr. Rod Gemmel, professional forester in
15 Ontario with 24 years experience in the area of the
16 undertaking with the MNR and Industry both at a variety
17 of locations.

18 Mr. Murray Ferguson, a professional
19 forester with 18 years experience, all in the area of
20 the undertaking, his entire working career, and from
21 Peter Murray. You may remember Mr. Murray, a
22 professional forester in Ontario, 35 years' experience
23 exclusively in the area of the undertaking,
24 particularly in the Great Lakes/St. Lawrence region.

25 Brian Nicks, professional forester and a

1 silvicultural specialist with 15 years' experience
2 exclusively in the area of the undertaking in a variety
3 of areas.

4 I ask you to consider and to look at what
5 the evidence was about the renewal experts that you
6 heard from the MNR and I suggest to you that their
7 experience and familiarity with renewal in the area of
8 the undertaking is considerable.

9 I ask you to contrast the depth of the
10 experience of the Industry renewal witnesses and their
11 qualifications with certain of the other witnesses that
12 you have heard.

13 I am obliged to say to you with no wish
14 to be critical in any way or discourteous to the
15 individuals who came forward to assist you in your
16 deliberations that that is a meaningful comparison that
17 you are going to be required to make, in my respectful
18 submission, because in the end you are going to have to
19 choose which of conflicting evidence to accept.

20 I ask you to remember in this regard. In
21 the case of Mr. Maser, that he had no knowledge or
22 familiarity with the conditions in the area of the
23 undertaking with its species or management practices,
24 that he readily acknowledged it, was candid about it
25 and forthright, that he had never been there at all

1 until he attended a conference there approximately one
2 year before he testified.

3 In the case of Professor Crandall Benson,
4 he wasn't qualified before you as an expert in renewal
5 activities or practices or in planning for renewal. He
6 acknowledged he hadn't been in the field on renewal
7 matters for at least the last 18 years, since 1974 in
8 Thunder Bay, and he has had no silvicultural experience
9 since then, save for one consulting project that he
10 described to you in evidence.

11 Then in the case of George Marek, Mr.
12 Marek's experience relates to the Lake Nipigon area
13 only. His entire working career in Canada has been
14 spent there. He has not been involved in implementing
15 timber management planning measures since at least
16 1985. His career has concentrated primarily on one
17 species, black spruce, and he acknowledged that he
18 wasn't an expert in the Clay Belt area and that his
19 knowledge of conditions -- and that it was true that
20 his knowledge of conditions in that area was very
21 sporadic.

22 In these circumstances, we respectfully
23 submit, it should be accepted by this Board that Mr.
24 Marek's experience in renewal activities in the area of
25 the undertaking, while acknowledged within his area of

1 familiarity and by that I mean the Lake Nipigon area
2 and the black spruce working group, is limited in
3 scope.

4 I ask you to consider all of that because
5 at the end of the day when you come to have to decide
6 which terms and conditions to accept, I suggest they
7 should be assessed, as I did earlier, against their
8 practicability, their affordability, but I also suggest
9 against their silvicultural merit when you come to talk
10 about renewal conditions and about the reliability from
11 a scientific and demonstrated professional experience
12 base of the rationale advanced before you for the terms
13 and conditions because you are being asked to approve a
14 fundamentally different approach to renewal in this
15 province.

16 Fundamentally different from what is
17 carried out today and what has been carried out since
18 1980 and to do that, I suggest, the comfort level of
19 being able to distinguish between evidence that you are
20 satisfied is reliable or unreliable should be there and
21 it is in that context that I ask you to take the
22 qualifications, the background and the demeanour of
23 witnesses into account.

24 Now, FFT in its terms and conditions has
25 made a number of specific silvicultural proposals. We

1 dealt with those at length in our written submissions
2 at pages 172 to 232.

3 Those submissions were based on FFT's
4 March 1992 version of its terms and conditions. Those
5 terms and conditions in those silvicultural proposals
6 have changed in some but not all respects and it is
7 important for the purposes of our submissions, we
8 suggest, to understand where and how they have changed.

9 Again, I am just talking for the moment
10 about their silvicultural proposals and those changes
11 about which we will be speaking are the following: FFT
12 conditions 25 and 26, their proposed silvicultural
13 ground rules have changed slightly; condition 27,
14 silvicultural planning, general principles, essentially
15 unchanged; condition 28, silvicultural planning
16 criteria, unchanged for the most part, but materially
17 changed we suggest in subparagraph (a).

18 If I could just have a moment, Madam
19 Chair.

20 Materially changed I suggest in
21 subparagraph 1(a) of condition 28; condition 29,
22 silvicultural guidelines have changed significantly and
23 materially in many respects. Some portions of it have
24 been retained verbatim from the terms and conditions
25 version in March 1992.

1 Just dealing with condition 29. There
2 are no longer any specific guidelines or prescriptions
3 contained in FFT's condition 29 for the black spruce
4 working group, for the mixedwood management working
5 group including white spruce, for the jack pine working
6 group, for poplar or white birch. They are gone.

7 There are still specific guidelines,
8 prescriptions contained in condition 29 for white pine,
9 red pine and the tolerant hardwood species and they are
10 the same as in the March 1992 version of FFT's term and
11 condition.

12 Importantly, we suggest, FFT has
13 introduced to its proposed condition 29 new language
14 intended to require restrictions on clearcut sizes
15 apparently applicable to all species and all working
16 groups. That's now in condition 29.

17 Their silvicultural exceptions remain
18 unchanged and their terms and conditions on full-tree
19 logging and shallow soil or sensitive sites, as I
20 understand it, are also unchanged.

21 Many of the submissions, Madam Chair, Mr.
22 Martel, that we made in our written submissions to you
23 concerning FFT's silvicultural proposals, and I include
24 in that phrase their proposed silvicultural guidelines,
25 planning criteria, silvicultural exceptions, that's the

1 umbrella term that we have used in our submission,
2 their silvicultural proposals, continue to be germane
3 and continue to be relevant specific to the conditions
4 set out in FFT's conditions and it is our submission
5 taking into account the changes that have been made
6 that FFT's silvicultural proposals as a whole do four
7 things.

8 First, that they continue to seek to
9 impose a set of rigid management rules which are
10 intended to apply the across the area of the
11 undertaking.

12 While some of the rules that they
13 previously urged specific to working groups have been
14 deleted they have retained others and they have
15 introduced a proposed mandatory approach to
16 clearcutting which appears to apply to all working
17 groups and all species which of and in itself, in our
18 submission, is a very rigid approach.

19 As such, it is our submission that they
20 constituent an attempt to predetermine appropriate
21 silvicultural treatments and decisions without regard
22 to the diversity and variety of site conditions and
23 circumstances that exist in the area of the
24 undertaking.

25 Secondly, Madam Chair, it is our

1 submission that if these conditions, these
2 silvicultural proposals are accepted by this Board they
3 would have the effect of removing to a very significant
4 degree from professional managers the flexibility in
5 timber management decision making that you have heard
6 in all of the evidence from professional foresters is
7 necessary to manage the timber resource and that that
8 consequence must be examined in light of the potential
9 to achieve the purpose of the undertaking.

10 Thirdly, we suggest, Madam Chair, that if
11 these silvicultural proposals are accepted by the Board
12 they would undermine effective resource management in
13 the area of the undertaking and ignore the economic
14 consequences of rigidity in management of northern
15 Ontario's most significant resource.

16 Finally, Madam Chair, Mr. Martel, if
17 accepted these silvicultural proposals, we suggest,
18 would take the ambit of the purpose of this undertaking
19 far beyond that of timber management and squarely into
20 the realm of forest management and advancement of other
21 non-timber objectives.

22 I propose to spend some time on our
23 submissions on these proposals, Madam Chair. I don't
24 know what your preference is in terms of the break.

25 MADAM CHAIR: We are prepared to take our

1 afternoon break now and return at three o'clock, Ms.
2 Cronk.

3 MS. CRONK: Thank you very much.

4 MADAM CHAIR: By the way, we adjourn at
5 four o'clock, so you will have an hour when we come
6 back.

7 MS. CRONK: Thank you.

8 ---Recess at 2:45 p.m.

9 ---On resuming at 3:00 p.m.

10 MADAM CHAIR: Please continue, Ms. Cronk.

11 MS. CRONK: Thank you, Madam Chair.

12 Madam Chair, Mr. Martel, it may be
13 helpful for you to have before you Volume 3 of FFT's
14 submissions which are their revised terms and
15 conditions.

16 If I could deal first with the remaining
17 species specific proposed conditions set out by FFT, I
18 would direct your attention first to page 14 of their
19 terms and conditions and specifically to condition
20 29(4) dealing with white pine.

21 You will see that was the case in FFT's
22 March 1992 version of this condition. FFT continues to
23 propose that for white pine the uniform shelterwood
24 method shall be utilized.

25 On our reading of this term and condition

1 no alternative prescription nor any flexibility is
2 provided for managers in the management of white pine.
3 That, we suggest, flows from the words used in
4 subparagraph 4 which are expressed in mandatory terms
5 "shall utilize". The 'be' is missing, shall be
6 utilized. That's mandatory language.

7 We point out, Madam Chair, Mr. Martel,
8 that no expert on the management of white pine
9 testified on behalf of FFT in support of this proposed
10 condition for white pine.

11 Mr. Marek's career experience, as I have
12 already pointed out, was predominantly as he
13 acknowledged with respect to black spruce.

14 In contrast, both Brian Nicks and Peter
15 Murray testified before you that they have had personal
16 management experience with white pine.

17 Mr. Nicks testified that there is no
18 silvicultural basis for the proposition that as a
19 uniform approach management of white pine should be
20 restricted to the use of uniform shelterwood cuts.

21 He testified that uniform shelterwood
22 cuts are certainly a valuable system for white pine in
23 certain areas as, for example, where there is
24 sufficient basal area or stocking of white pine at the
25 outset.

1 However, he explained that on E.B Eddy's
2 own FMA areas where white pine occurs it often occurs
3 on ridge tops and is in scattered individuals or in
4 clumps and there isn't the canopy of white pine there
5 to practise uniform shelterwood even within stands in
6 areas that are the white pine working group. So that
7 one must utilize alternative methods which he testified
8 can also be quite successful.

9 He provided you within an example of the
10 approach used by E.B. Eddy for managing the white pine
11 working group as an alternative method where there was
12 insufficient canopy.

13 Mr. Peter Murray shared these views and
14 he suggested, for example, that leaving scattered trees
15 or a seed tree on a diameter or on a selected seed tree
16 system were effective treatments for the management of
17 white pine.

18 You may remember that you viewed white
19 pine regeneration using the clearcut silvicultural
20 harvest system during your site visit of the Great
21 Lakes/St. Lawrence Forest in November of 1988.

22 You saw on that trip a 127-hectare
23 clearcut that had been mechanically site prepared in
24 1985 and planted to white pine in 1986. There has been
25 a 95 per cent survival of planted white pine trees in

1 that area and I would refer you to Exhibit 393 which is
2 your site 7B-5 -- sorry, your Board report of that site
3 visit relating to site 7B-5.

4 The MNR experts, renewal experts who
5 testified before you also agreed that there were
6 difficulties with adopting this kind of uniform,
7 one-approach-only management approach for white pine
8 and they pointed out that uniform shelterwood has not
9 proven to be universally successful in the regeneration
10 of white pine in Ontario and that clearcutting followed
11 by heavy site preparation, especially on more
12 competition-proned sites could be an appropriate method.

13 I say to you simply with respect to this
14 condition then, Madam Chair, that it reflects by using
15 mandatory language for one form of silvicultural
16 prescription only, but can only be regarded as a rigid
17 approach to management of this working group which
18 denies any flexibility based on the site conditions or
19 diversity of site conditions in the area of the
20 undertaking.

21 It would be our submission to you, it is
22 our submission to you that in no case with respect to
23 any species or any working group should adoption of
24 only one or two silvicultural prescriptions be mandated
25 in mandatory terms where there is evidence before you

1 of alternative methods that produce successful
2 regeneration results.

3 The silvicultural proposals put forward
4 by FFT also provided for a number of silvicultural
5 exceptions and they are so-called in condition 32,
6 that's the heading of condition 32.

7 I don't propose to spend much time on the
8 detail of that condition except to note this, that it
9 provides that an exception to the requirements of
10 condition 29, which includes the ones on white pine
11 that we just looked at, may be approved by the MNR in
12 certain circumstances.

13 However, none of the circumstances
14 identified for an exception are based on silvicultural
15 reasons were timber management objectives.

16 Thus, the first exception in condition 32
17 relates to wildlife needs as determined by a regional
18 ecologist.

19 The second exception relates to
20 management objectives for non-timber values and the
21 third and final exception relates to the silvicultural
22 proposals made by FFT itself and it essentially
23 provides that an exception may be granted if it is
24 necessary to satisfy some of the silvicultural
25 principles and other criteria set out by FFT in its

1 conditions.

2 None of those exceptions would permit
3 deviation from FFT's proposed white pine working group
4 guidelines where the circumstances of the site,
5 prevailing marketing conditions, mill requirements, et
6 cetera, necessitate or warrant an alternative approach.

7 Many of those comments apply as well to
8 subparagraph 5 of condition 29 and FFT's proposal for
9 red pine. If you look at the language of it it is
10 propose again that the uniform shelterwood method shall
11 be utilized for red pine, save only that planting may
12 be carried out on some sites. So we have a situation
13 where FFT's proposals would permit planting of red pine
14 but not white pine.

15 Once again, in our submission, little
16 flexibility is afforded to managers by the language of
17 this condition if it were to be adopted by the Board.

18 We point out, again, that no expert on
19 the management of red pine testified on behalf of FFT
20 in support of this proposed condition pertaining to red
21 pine.

22 In contrast, both Brian Nicks and Murray
23 Ferguson indicated that they had experience in the
24 management of red pine. Mr. Ferguson testified that he
25 did not agree based on the experience that he had

1 personally had with managing red pine that it was
2 appropriate on a silvicultural basis to restrict the
3 management of red pine to the use of uniform
4 shelterwood cuts.

5 I pointed out that he was aware of
6 several very successful plantations of red pine in
7 northwestern Ontario, in particular on dryer sites and
8 planting would be permitted under this condition
9 proposed by FFT, as we understand it, although no
10 guidance or direction is afforded as to the
11 circumstance in which that might be permitted. So
12 presumably this is within the purview of the manager's
13 discretion.

14 The difficulty is that Mr. Ferguson also
15 pointed out that he was aware of sites that with the
16 leaving of clearcutting regeneration near the base of a
17 seed tree also resulted in very successful red pine
18 generation and we went on to explain a variety of
19 treatments that produced successful regeneration of
20 this species other than uniform shelterwood cuts or
21 planting.

22 Mr. Nicks gave evidence to the same
23 effect, as did MNR renewal experts who pointed out that
24 because this species is shaded intolerant that uniform
25 shelterwood system is generally unsuitable for red pine

1 and they talked about the difficulty of managing stands
2 where there is both the white pine and the red pine
3 component.

4 It was their evidence that if the
5 dominance of red pine over white pine is desired in a
6 new stand shelterwood cutting will not be successful
7 and planting the understorey to red pine will not
8 diminish the competitive advantage that white pine
9 maintains.

10 So that only clearcutting with seed trees
11 or clearcutting with site prep and planting in those
12 circumstances will produce desired results.

13 Once again, Madam Chair, Mr. Martel, I
14 refer you to that evidence as simply an example that
15 this kind of an approach is too absolutest with respect
16 to this working group. It is too narrow and it
17 confines without a demonstrated silvicultural basis for
18 doing so the flexibility that managers have to properly
19 manage the working group of this species.

20 Again, many of the same comments apply to
21 subparagraph 6 in the condition proposed by FFT for the
22 tolerant hardwood working group. Under their condition
23 only the shelterwood or selection harvest methods could
24 be utilized. Once again, the language is mandatory.

25 Peter Murray has over 30 years'

1 experience as a practising forester specifically in the
2 management of tolerant hardwoods and it was his
3 evidence before you that while the uniform and
4 shelterwood system is the preferred silvicultural
5 system for management of this species there is no
6 silvicultural basis for the proposition that it should
7 be the exclusive and only method of treatment because
8 he had encountered cases in his working career where
9 that system would not have worked because the stand did
10 not meet the criteria necessary for selection or
11 uniform shelterwood management. In those cases he
12 suggested alternate methodologies should be permitted
13 or you simply won't get the species to renew.

14 He urged that clearcutting and
15 clearcutting system is one of the systems that must be
16 an option in the management of tolerant hardwood.

17 The MNR renewal experts specifically
18 agreed with that and stated that it can be used - that
19 is the clearcutting system - can be used as a proper
20 management approach where poor quality stands offer the
21 opportunity for an increase in regeneration of yellow
22 birch, ash and similar species.

23 No expert on the management of tolerant
24 hardwoods testified before you in support of this
25 condition.

1 I would ask you next to look at
2 subparagraph 2 of condition 29 which is the new version
3 under FFT's proposed silvicultural guidelines
4 pertaining to clearcutting sizes.

5 As we understand this condition, it would
6 require the following things: First, that the MNR
7 would be obliged to develop guidelines specifying a
8 range of acceptable clearcut sizes and contiguous
9 clearcut sizes.

10 Secondly, that the MNR would be obliged
11 to implement such a range of smaller cuts up to one
12 hundred hectares and only then, on the language as it
13 is currently framed, "to the extent compatible with the
14 protection of biodiversity."

15 That language, I suggest, is important,
16 Madam Chair. It is the third line of subparagraph (1)
17 of subparagraph (a) and it provides that:

18 "The MNR shall implement a range of
19 smaller cuts up..." and I believe the
20 two is missing,

21 "...up to 100 hectares to the extent
22 compatible with the protection of
23 biodiversity."

24 Then thirdly provides that where
25 clearcuts exceed 100 hectares, and it appears to

1 contemplate that there will be cases where that can
2 occur, they would have to be identified in the relevant
3 TMP and a rationale provided for the size of the cut.

4 The guidelines are to specify time limits
5 for return cuts and these time limits are to be based
6 on the height and age of regenerated adjacent stands
7 and "the goal of protecting and enhancing
8 biodiversity."

9 You are aware, Madam Chair, Mr. Martel,
10 by virtue of the cross-examinations which took place by
11 counsel for the Industry that the Industry was very
12 concerned at the previous version of FFT's terms and
13 conditions which provided for very specific, often
14 mandatory silvicultural prescriptions for various
15 species in addition to the white, red pine and tolerant
16 hardwood species still dealt with under the condition.

17 They have been removed and to that extent
18 that is a positive adjustment in FFT's terms and
19 conditions, but the Industry is also gravely concerned
20 at the introduction in this paragraph in this kind of
21 language of this approach to clearcutting.

22 May I explain why. Under FFT's March
23 1992 terms and conditions there was a proposed 100
24 hectare restriction on clearcuts applied to the jack
25 pine working group, for example. Strip cutting was

1 proposed for black spruce.

2 Under this new condition 29 the range of
3 smaller cuts to be developed by the MNR first cannot
4 exceed 100 hectares because it says up to, up
5 parenthetically, to 100 hectares and, secondly, there
6 is no species differentiation anywhere in this
7 condition.

8 So on a reading of the condition, if
9 adopted by the Board, it would apply, I suggest, to all
10 species, save only where there is specific provision to
11 the contrary as there is in the case of white pine, red
12 pine and tolerant hardwood species.

13 There is agreement, Madam Chair, Mr.
14 Martel, I suggest among the parties to this hearing,
15 whether they have chosen to frame it that way or not,
16 there is agreement that clearcutting is necessary, is a
17 proper practice and should be allowed as a
18 silvicultural system in the area of the undertaking.

19 The only issue appears to be the size of
20 permissible clearcuts and the approach urged by FFT
21 that MNR should be required by enforceable conditions
22 imposed by this Board to develop a range of smaller
23 cuts which should apply unless an exception can be
24 justified in a way contemplated under their terms and
25 conditions.

1 Significantly, I suggest, the Ministry of
2 the Environment proposes no restriction on clearcutting
3 size, nor does any other major full-time party to this
4 hearing.

5 The MNR indicated on Monday through Mr.
6 Freidin that it strongly recommends against the setting
7 of arbitrary clearcut size limitations in the area of
8 the undertaking.

9 The Industry fully endorses that position
10 based on the evidence before you and in that respect we
11 are in concert with the MNR, the MOE and the OFAH/NOTOA
12 coalition.

13 There continues to be two significant
14 problems with the approach to clearcutting taken in
15 this condition, in our submission.

16 The first is, based on the evidence that
17 you have heard in our submission this is still
18 implicitly a restriction for the sake of restriction
19 and we make that submission because the 100 hectare
20 size referred to in this condition is totally
21 arbitrary. Crandall Benson under cross-examination
22 indicated that the number could have been higher or
23 lower.

24 We suggest, Madam Chair, that a limit of
25 up to 100 hectares for the development of the range of

1 sizes that FFT is now urging is nothing more than a
2 response to the evidence before this Board from
3 foresters and biologists that there is no justification
4 for an arbitrary limit on clearcut size.

5 This condition, I suggest, imports an
6 arbitrary maximum number for the range of sizes that
7 are now to be developed if this condition were accepted
8 without, I suggest, any underpinning scientific or
9 silvicultural justification.

10 There is, for example, as you may recall
11 from the evidence, no evidence that canopy opening size
12 or size of clearcutting is related to silvicultural
13 efficacy and you have heard that evidence -- you have
14 an example in the Robinson and Flowers photographs
15 before you today and you have heard that evidence from
16 a number of harvesting and renewal experts including
17 Mr. Ferguson, Mr. Nicks and Mr. Wadell.

18 As we read this condition, Madam Chair --
19 and there is no and cannot now be any witness before
20 you to give you evidence relating to how this condition
21 might be applied. We are confined to examining its
22 language and what that would mean if it were adopted by
23 you in that way.

24 As the Industry understands this
25 condition, the MNR would be required to identify and

1 establish a range of clearcut sizes in no event
2 exceeding 100 hectares and, further, to implement that
3 range in an unspecified way.

4 It does permit exceptions, but the
5 exceptions -- there is no difficulty with the
6 identification of the exception, but the exception must
7 be rationalized or justified in the timber management
8 plan and the only difficulty with that, Madam Chair, is
9 that if it is a totally arbitrary number to begin with,
10 what you end up doing in a practical sense in a timber
11 management plan, I suggest, is justifying why you
12 should be entitled to depart from what was an arbitrary
13 standard in the first instance.

14 You have heard extensive evidence that
15 there are circumstances within the area of the
16 undertaking where clearcuts of a variety of sizes,
17 including those exceeding 100 hectares, are not only
18 appropriate, but the preferred silvicultural system
19 prescription for particular sites and those
20 circumstances which are going to find these
21 professional foresters I suggest documenting for the
22 sake of documentation exceptions or documenting a
23 rationale at great length as to why an exception should
24 be granted or permitted by the MNR to a limit that
25 shouldn't have been imposed on silvicultural or

1 scientific grounds to begin with and I suggest to you
2 that that has it backwards.

3 Why in the planning context would you
4 ever require people to justify a negative, if I can put
5 it that way, when imposition of the standard couldn't
6 be supported in the first instance.

7 Now, you have heard people in the course
8 of this hearing from time to time refer to exceptions
9 becoming the rule and becoming the norm, and I suggest
10 to you in any practical sense that that's precisely
11 what would occur if this condition was adopted.

12 What you would end up having is
13 repetition for the sake of repetition to bring yourself
14 within a rationale exception to exceed 100 hectares.

15 I suggest to you unless you, the Board,
16 are satisfied that there is a scientific or
17 silvicultural basis warranting the identification of a
18 clearcut size restriction, even when it is expressed to
19 be the maximum of permissible ranges, as is the case in
20 this condition, that approach should not be adopted in
21 the absence of your being satisfied that that's the
22 case.

23 I suggest to you that the evidence that
24 you have received is exactly to the contrary, that there
25 is no silvicultural basis for such a restriction, that

1 there is no correlation between silvicultural efficacy
2 and clearcut size or canopy opening, and that no
3 circumstances importing this kind of a condition into
4 the future planning process to be followed across the
5 entirety of the area of the undertaking is guaranteeing
6 a paper exercise to defend a rationalized exception
7 you shouldn't have to embark on to begin with.

8 In the end the Industry says the
9 condition is unnecessary, that it has not been
10 demonstrated to be necessary, that there is no
11 biological rationale for it and that it, therefore,
12 should not be a requirement that guarantees that the
13 exception will become the rule.

14 I ask you to consider in addition to the
15 evidence of the MNR and OFIA witnesses on this issue
16 the issue of Dr. Ian Thompson and Dr. Welsh, both
17 independent witnesses who testified before you
18 including on this issue.

19 You may remember that Dr. Ian Thompson is
20 a wildlife biologist employed by Forestry Canada. He
21 noted the importance of using clearcutting to
22 approximate natural disturbance in the boreal forest
23 and he specifically discussed in his evidence the
24 merits of large versus large small clearcuts.

25 He testified that larger scale

1 disturbances are a better form of management in
2 Ontario's boreal forest than are small scale harvest
3 efforts and he said this:

4 "And if you want to regenerate the
5 boreal forest in some sort of natural
6 system way, if up want to regenerate the
7 natural forest in terms of the ecosystems
8 that are currently there, then the way
9 not to do it is to go out and log in
10 small patches because the boreal forest
11 is not driven in that way."

12 Dr. Thompson's evidence was concerned
13 with the whole forest ecosystem not just with the
14 wildlife component and he suggested that smaller area
15 clearcuts, smaller area patches were not the way to go.

16 When he was questioned about the possible
17 negative effects of large clearcuts, Dr. Thompson
18 responded by stating the following:

19 "Small clearcuts probably at the other
20 end of the spectrum are equally as bad
21 because they have no way to mimic natural
22 processes in the way in which the boreal
23 forest develops."

24 Dr. Welsh is another independent witness
25 who testified before the Board and he pointed out that

1 larger clearcuts, not smaller clearcuts, are the means
2 for proper regeneration in the boreal boreal forest.

3 It was his evidence:

4 "I am not arguing that we need 10,000
5 hectare cuts. I am arguing that 100 and
6 500 and 1,000 hectares ones may well be
7 necessary in a lot of cases."

8 I ask you simply to consider that
9 evidence and to consider in the context of the evidence
10 that you do have whether a justification on biological,
11 silvicultural or scientific grounds has been made out
12 in this case for what Dr. Benson, I suggest,
13 acknowledged was an arbitrary restriction on clearcut
14 size.

15 There is one other aspect of the
16 condition that I should point out as well. It clearly
17 contemplates that there will be situations where if
18 documented in the way FFT suggests in the timber
19 management plan clearcuts greater than a hundred
20 hectares in size would be permitted.

21 What isn't clear in the conditions is the
22 interplay between condition 32, the silvicultural
23 exceptions put forward by FFT, and the exception which
24 appears on the face of Section 29.

25 What that means in a practical sense is,

1 what are the factors to be taken into account by MNR in
2 deciding whether a rationale offered for departure from
3 the 100 hectare limited is meritorious.

4 You are driven, I suggest, to Section 32
5 which are the exceptions to the silvicultural proposals
6 and they don't commend the exception on silvicultural
7 grounds.

8 Remember that there are three components
9 to them; one is based on wildlife concerns determined
10 by a regional ecologist, one is based on what I termed
11 non-timber objectives, and the third based on FFT's own
12 silvicultural proposals.

13 So there is a difficult with the late
14 amendment in terms of its internal consistency with the
15 other conditions proposed by FFT and I suggest to you
16 that an exception is not clearly permitted for
17 silvicultural reasons.

18 I ask you to consider, although I don't
19 propose to review them, our written submissions to you
20 on this issue at pages 112 to 125 dealing generally
21 with our concerns regarding restrictions on clearcut
22 size.

23 We also ask the Board to take into
24 account the implications of clearcut size restrictions
25 on forest diversity and our submissions on that issue

1 are found at page 218 to 220.

2 MNR witnesses in their reply evidence
3 testified that clearcut size restrictions have and
4 carry with them adverse implications for forest
5 diversity and I would refer you to Exhibit 2295 at Tab
6 3, pages 20 to 21.

7 They make the following points in summary
8 form, if I could describe them this way. First, that
9 restrictions on clearcut size to small clearcuts are
10 not consistent with natural disturbance patterns in
11 Ontario's boreal forest. There has been considerable
12 evidence on that which the Board will recall.

13 Secondly, that the imposition of
14 regulated small cut sizes would not provide adequate
15 areas of large even-aged forest tracts to which boreal
16 wildlife communities have adapted and on which they
17 presumably depend. For example, if that were the
18 approach taken to jack pine, conditions could be
19 created that are unsuitable for woodland caribou unless
20 the management of jack pine entirely were to fall
21 within a rationalized exception contemplated by the new
22 condition.

23 The MNR reply witnesses specifically
24 addressed the issue of the impact of many small, widely
25 dispersed clearings with large forest tracts, and if

1 you look at the actual language of this condition I
2 suggest that is what it contemplates.

3 I suggest to you that it contemplates
4 that the MNR will develop a range of cuts in no case to
5 exceed 100 hectares unless that can be justified and
6 rationalized in a timber management plan, and that they
7 will implement that range of smaller cuts.

8 So that I suggest to you that if this
9 condition were adopted and enforced, as it would be if
10 adopted by this Board, what that would result in is
11 precisely what the MNR witnesses spoke to; that is a
12 widely dispersed series of small cuts of varying sizes
13 coupled, presumably, in some instances by a justified
14 larger than 100 hectare cut area.

15 Their evidence on that issue is this.
16 The large amounts of edge created would juxtapose
17 wildlife species dependent on early successional stages
18 with wildlife species dependent on late successional
19 stages. The result in species combinations may
20 represent wildlife communities unlike any found as a
21 result of natural disturbance or at least in far
22 greater frequency than would naturally occur.

23 They went on to say that the implication
24 for individual species perpetuation by that mosaic of
25 small cuts, particularly for poor competitors or those

1 dependent on simple community species compositions, are
2 unknown but likely unfavorable.

3 They also point out two practical
4 concerns, that the impact of that kind of an approach,
5 a dispersal of small cuts now under this condition in a
6 variety of sizes, would be exacerbated by the need to
7 distribute the cuts over a very broad area with the
8 result that that would require further intervention to
9 the land; in other words, more roads.

10 They made the point before you and they
11 were examined on it on MNR's reply panel, I believe it
12 was No. 4, that the effect of these conditions if
13 implemented would lead to the creation of more roads
14 because access would be increased or the need for
15 access would be increased.

16 We suggest to you that in the context of
17 all of that that even the development of a range of
18 smaller cuts up to a maximum size should not be
19 something approved or endorsed by this Board unless
20 there is an evidentiary basis before you establishing
21 its need and its benefit, and I repeat our submission
22 to you that the evidence is, in fact, we suggest, to
23 the contrary.

24 If I could take you to at least one other
25 aspect of FFT's changed silvicultural proposals and

1 that relates to the silviculture planning criteria. I
2 would ask you to look at page 12, condition 28(1)(a).

3 FFT originally proposed -- this is the
4 section dealing with planning criteria. It is at page
5 12, sir, 28(1)(a).

6 FFT originally proposed in its March 1992
7 terms and conditions in subparagraph (a) that the MNR
8 be obliged to ensure that approved silviculture
9 prescriptions will result in the lowest cost to the
10 public to regenerate stands equal to the species and
11 density of the stands that are harvested. That was the
12 language - "equal to the species and density of the
13 stands that are harvested.

14 That has been changed to read as you now
15 see it in subparagraph (a):

16 "To result in the lowest cost to the
17 public..." That is still the same, but
18 now it says:

19 "...to maintain and perpetuate natural
20 ecosystem elements in proportion to their
21 occurrence and spacial configuration in
22 the existing landscape."

23 I say to you, Madam Chair, Mr. Martel,
24 there is considerable difficulty with that kind of
25 language in this condition. Some practical and some

1 interpretive.

2 First, the phrases used in that
3 subparagraph are in large part, although not entirely,
4 undefined in the terms and conditions. This was
5 introduced, as was their right, there is no criticism
6 intended in that, there was introduce at a time when no
7 witness could be asked about it; what its intended
8 meaning was, what its intended scope was. There is no
9 evidentiary base before you specific to this proposed
10 condition.

11 That means as a practical matter that I
12 can't ask the witness in a forum that permits legally
13 admissible evidence as to what it means, where the land
14 language comes from, what its rationale is and what its
15 scope is.

16 I suggest to you that on its face, which
17 is what we are left with, because, of course, counsel
18 for FFT can't now give evidence on this, I know they
19 wouldn't try, they can't give evidence as to the
20 intention of it, we are left in dealing with the
21 language of itself and what the language suggests, in
22 my respectful submission, is a much broader intention
23 to what was there before and that's because what was
24 there before in the March 1992 conditions required the
25 MNR to ensure, again mandatory language was used then

1 as it was now, to ensure that approved silvicultural
2 prescriptions would result in the lowest cost to the
3 public, and that's consistent or common to the
4 conditions, but now the balance of it isn't specific to
5 stands as the earlier one was.

6 The earlier ones required regeneration of
7 the stands equal to the species and density of the
8 stands that were harvested. Now it talks about
9 something quite different, maintenance and perpetuation
10 of natural ecosystem elements in a certain way in
11 proportion to their occurrence and spacial
12 configuration in the existing landscape.

13 I say to you as a practical matter, Madam
14 Chair, Mr. Martel, that maintaining and perpetuating
15 natural ecosystem elements begs of clarification and
16 begs for narrowing. Natural ecosystem elements on the
17 face of it that language includes everything. Not just
18 the stands that were there before or the species and
19 density of the stands that were there before, but
20 everything.

21 I suggest to you that it includes water,
22 that it includes wildlife, that it includes stands, the
23 existing natural ecosystem conditions prior to harvest
24 is what this condition now appears to contemplate and I
25 say to you on a practical level there are a number of

1 problems with that.

2 First, in our respectful submission it is
3 highly impractical; secondly -- impractical in the
4 sense that it may be impossible to achieve; secondly,
5 that it is vague. It is considerably broader than what
6 was before there before and it is no longer stand or
7 species dependent, and sets an improper standard.

8 I ask you to note that the operative
9 words associated with natural ecosystem elements in the
10 condition are maintenance and perpetuation which seems
11 to imply that the exact configuration proportionately
12 that existed before harvest, all of those elements, has
13 to be assured, has to be perpetuated in the future and
14 preserved.

15 I ask you for those reasons, Madam Chair,
16 Mr. Martel, to reject this condition as an
17 inappropriate planning criteria and a totally
18 impractical one.

19 I ask you to take into account in
20 considering that that Mr. Marek made it clear in his
21 evidence that a requirement to achieve after harvest
22 stands that were equal to the species and density of
23 the stands that are harvested equates to the creation
24 of a pure stand - that is a monoculture - of a working
25 group which existed prior to harvesting and that's a

1 component of natural ecosystem elements and if that
2 continues to be encompassed by this language, in
3 effect, what is being required is the creation after
4 harvest of precisely what was there before and in the
5 same density and in the same species configuration.

6 Mr. Benson during the course of his
7 evidence himself questioned the ability of natural
8 regeneration methods to result in cut-over areas
9 returning to the original species composition that
10 existed prior to cutting.

11 While confirming that areas left for
12 natural will regenerate, he questioned the quantity and
13 quality of this regeneration and the time period
14 required for successful regeneration on these areas.
15 That evidence, Madam Chair, is found at volume -- I
16 will give you the citations because there is a typo in
17 our written submissions and it is the wrong citation.
18 The correct volume is 270, page 48,778 and following.

19 Also during the course of his evidence
20 Mr. Benson recognized that timber managers should
21 continue to have regeneration options available to
22 them. He said:

23 "Well, you can't apply any one
24 particular method universally in there,
25 wouldn't really be any need for foresters

1 if you could because foresters should be
2 able to apply the best knowledge they can
3 to obtain a particular type of
4 regeneration and learn from that
5 particular experience of how to improve
6 it and modify it within the constraints
7 for managing that area."

8 I ask you to take all of that into
9 account in considering the implications of some of the
10 planning criteria urged by FFT and in particular to
11 consider the detailed written submissions that we have
12 given you on all of the aspects of this planning
13 criteria and the silvicultural proposals as a whole in
14 our written submissions.

15 Madam Chair, unless the Board has any
16 questions or I can be of any assistance in respect to
17 the submissions that I have on renewal issues I propose
18 to turn to another area.

19 If I could turn then, my next topic is
20 maintenance and in the time remaining today perhaps I
21 could deal with certain general submissions first and
22 then more briefly, but with some detail tomorrow on
23 certain of the aspects that we urge you to consider on
24 the evidence before you concerning maintenance.

25 First, again on the question of need. In

1 our respectful submission there is no issue among the
2 parties as to the need for maintenance in either its
3 tending or its protection aspects, but in both cases;
4 that is with respect to both to tending and protection,
5 the issues between the parties or among the parties
6 relate to the type of tending and protection measures
7 which should be available, their modes of application
8 and their circumstances of use; that is the
9 circumstances under which they intend to be used.

10 So it has nothing to do with whether the
11 resource should be tended or whether it should be
12 protected, but there is consensus on that in our
13 submission. Where the disagreement arises is how, in
14 what circumstances and by what techniques.

15 I point out as an initial matter of
16 importance that the only full-time party to the hearing
17 to urge restrictions on the use of herbicides, chemical
18 insecticides and aerial spraying techniques for
19 herbicide applications is FFT.

20 The Ministry of the Environment has not
21 called in its terms and conditions for any prohibition
22 or restriction on the use of herbicides, the use of any
23 particular herbicide, the aerial spraying of herbicides
24 or the use of chemical insecticides. FFT is the only
25 full-time party before you to do so.

1 NAN's proposed conditions relating to
2 these issues with were withdrawn.

3 I would like to deal first, if I could,
4 with tending. You have heard in the context
5 specifically of tending evidence from tending experts
6 called both by the MNR and by the Industry of the need
7 for flexibility in the field with respect to tending
8 methodologies and to tending methods and you have heard
9 evidenec with respect to that concerning specifically
10 renewal, and I call to your recollection the specific
11 evidence that you have heard about the need for that
12 with respect to tending and the rationale for that
13 outlined by Industry and MNR tending experts.

14 It was the uniform position of the
15 tending experts who did testify before you that
16 flexibility as to tending methods and tending
17 techniques was necessary in the area of the undertaking
18 if effective tending activities are to be carried out
19 in a cost effective and very efficacious way.

20 That was the evidence of the OFIA's
21 tending experts, including Dr. McCormack, and the MNR
22 tending experts. I point out that the OFIA and the MNR
23 were the only parties to call experts on those issues
24 before you. That is the body of evidence on these
25 issues. The tending experts, therefore, were agreed on

1 the need for this flexibility.

2 Mr. Marek called by FFT also specifically
3 agreed to the need and the importance of maintaining
4 flexibility for professionals in matters relating
5 specifically to tending and protection.

6 It was put to him specifically in the
7 context of tending and protection and his views were
8 sought as to the need for that based on the
9 observations he made over the years about tending.

10 It was his evidence that a professional
11 forester in fulfilling his or her professional
12 obligations on each management unit should have the
13 flexibility according to the terms of the approved
14 timber management plan to reach the right tending and
15 protection decision.

16 He agreed with the proposition that it is
17 valuable and desirable for professional foresters to
18 have available to them on each management unit a broad
19 range of alternatives for tending and protection that
20 are cost effective.

21 It is the position of the Industry, Madam
22 Chair, first, that a full range of tending alternatives
23 should be available in the area of the undertaking
24 subject to regulatory controls as to how they would be
25 undertaken and implemented, but that a full range of

1 the options themselves should continue to be permitted.

2 Secondly, that the need for such a full
3 range of tending alternatives has been demonstrated
4 before you.

5 Thirdly, that they should include
6 specifically the potential future use of 2,4-D and
7 other chemicals herbicides by aerial spray techniques.

8 Fourthly, that there is no evidence
9 before this Board of negative environmental or health
10 effects from the use of such chemical herbicides
11 sufficient to warrant restriction or preclusion of
12 their future use in timber management in appropriate
13 circumstances and subject to proper safeguards.

14 Could I just repeat that one, Madam
15 Chair. It is the position of the Industry that in all
16 of the evidence you have heard there is no evidence
17 before you of negative environmental or health effects
18 from the use of such chemical herbicides sufficient to
19 warrant restriction on or preclusion of their use in
20 the future in timber management in appropriate
21 circumstances and subject to proper procedures.

22 You have heard, Madam Chair, Mr. Martel,
23 considerable evidence about the various advantages and
24 disadvantages of a variety of tending techniques. You
25 will recall, for example, that the MNR's tending

1 experts and the Industry tending experts reviewed with
2 you based on their experience what they viewed as the
3 advantages and disadvantages of manual tending
4 techniques, mechanical tending techniques and herbicide
5 treatments, whether applied by ground or applied by
6 spray from the air and they went through each of those
7 and described the pluses and minuses, the advantages
8 and disadvantages both from a silvicultural
9 perspective, an economic perspective and a biological
10 perspective on the ground.

11 In our respectful submission what emerged
12 from that evidence was not only the expressed opinion
13 of those experts that the only effective method for
14 broad tending measures in the area of the undertaking
15 is the use of chemical herbicides applied aurally
16 because that was the opinion expressed to you, but it
17 demonstrated justification for that view based on the
18 realities of the area of the undertaking and the actual
19 advantages and disadvantages inherent to mechanical an
20 manual measures.

21 So that what you have, in our respectful
22 submission, is all the tending experts who testified
23 before you confirming that the most effective method
24 for tending on a broad scale in the area of the
25 undertaking is by use of chemical herbicides applied

1 aerially.

2 Now, as you know, Madam Chair, Mr.
3 Martel, in FFT's earlier terms and conditions they
4 proposed a complete ban on the aerial spraying of
5 chemical herbicides in the area of the undertaking.
6 That remains in their final terms and conditions.

7 They proposed in their earlier versions
8 and in the final version now before you severe
9 restrictions on the future use of 2,4-D which, in our
10 submission, amount to essentially a preclusion in the
11 future of its use, a prohibition on its use.

12 They have suggested that the use of 2,4-D
13 in the future only be used as a last resort for timber
14 management within the area of the undertaking and that
15 being the case within 12 months of a condition approved
16 by you of the undertaking in this case and they suggest
17 a ban on aerial spraying.

18 I propose tomorrow to deal with the
19 evidence that you have heard with respect to those two
20 propositions and to direct you to the evidence which I
21 suggest should persuade you that aerial spraying of
22 herbicides including 2,4-D in appropriate circumstances
23 in the future should be permitted and it is, in fact,
24 necessary for proper management in the area of the
25 undertaking.

1 Madam Chair, I don't know whether you
2 wish to rise now.

3 MADAM CHAIR: Thank you very very much,
4 Ms. Cronk.

5 We will adjourn for the day and I think
6 we have to clear our materials out of the room and into
7 the storage closet again because people are using this
8 room this evening. We will be back at nine o'clock
9 tomorrow morning.

10
11 ---Whereupon the hearing was adjourned at 4:00 p.m.,
12 to be reconvened on Thursday, October 22, 1992
13 * commencing at 9:00 a.m.
14
15
16
17
18
19
20
21
22
23
24

25 [MC/BD [C. copyright 1985].



